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No.

IN THE

Supreme Court of the United States

October Term, 1997

CORNELL D.M.JUDGE CORNISH,

Petitioner,

v.

DISTRICT OF COLUMBIA
COURT OF APPEALS
and
BOARD OF PROFESSIONAL RESPONSIBILITY,

Respondents.

On Petition For A Writ of Certiorari To The District of Columbia Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

Cornell D.M.Judge Cornish™
(Counsel Pro Se and Pro Hac Vice For Petitioner)
Suite 301
1101 New Hampshire Ave., NW
Washington, D.C. 20037
(202) 429-9705

Date: August 1, 1997

CASILLAS PRESS • 1717 K STREET, N.W. • WASHINGTON, D.C. 20006 • (202) 223-1220

QUESTION PRESENTED

1. Whether a soundly rebutted, repudiated and renounced, reciprocal, sua sponte presumption of a confidential, personal disability without rational connection to the fact proved on the face of an Order of the functional inactivity of a first common law trademark in gross can conspire to provoke a state and the District of Columbia in concert to deny a patent, trademark and copyright attorney a prompt postdeprivation, trial by an effectively permanent, per se, blanket ban and seizure of his common law trademarks in gross and his federal and state licenses by prior restraint of his use and the dilution of the title and property of a second, non-disabled, famous mark in gross always, regardless of constitutional and statutory liability, including the effect of Public Law 104-98, due process, equal protection and the First Amendment?

LIST OF PARTIES

The petitioner is a patent, trademark and copyright attorney whose famous common law mark in gross under Public Law 104-98 is Cornell D.M. Judge Cornish. The respondents are the District of Columbia Court of Appeals and the Board Of Professional Responsibility.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

REASONS FOR GRANTING THE WRIT AND STAGE WHEN FEDERAL QUESTIONS RAISED 2

1. The District of Columbia Court of Appeals Decisions Captioned in Two Different Trademarks in Gross Tried To Avoid "Dilution" Arguments Under Public Law 104-98, and Evidence Supplied by Petitioner in Connection Therewith (See Note 1 of Decision of March 27, 1997), By Using Different Captions, These Decisions Being in Dilution of Petitioner's Marks, and in Conflict With the U.S. Tax Court Dedision, and Procedures in the Court of Appeals for the Federal Circuit and Supreme Court of the United States, and the District of the Eastern District of New York, Which Conflicts with the District Court of the Southern District of New York Decision Filed April 11, 1996. App. (Public Law 104-98 Raised Below and Here). App. pp. 3a-21a..... 20

II. The District Court Decision Conflicts with the Applicable Decisions of This Court (Raised in Exceptions Below) 7

III. The Federal Issues Presented By This Case Under Public Law 104-98 and, *inter alia*, Under the First, Fourth, Fifth, Sixth, Seventh and Fourteenth Amendments and Article I, § 8-10, Are Important To All Attorneys, and All Members of the Public and the Government at All Levels (Raised Here and in Exceptions and Briefs Below) 8

STATEMENT OF JURISDICTION 2

Page

CONSTITUTIONAL PROVISIONS INVOLVED 2

STATUTORY PROVISION INVOLVED 4

RULES INVOLVED 4

STATEMENT OF THE CASE 4

DIRECT CONCISE ARGUMENT AMPLIFYING REASONS RELIED ON FOR ALLOWANCE OF WRIT 4

OTHER MATERIAL FOR UNDERSTANDING (RULE 14 (i)(vi)) REMAINING QUESTIONS, INCLUDING EQUAL PROTECTION 9

CONCLUSION 23

APPENDIX CONTAINING ORDERS INDICATED ... 1a-42a

TABLE OF AUTHORITIES

Cases: **Page**

Armstrong v. Mano, 380 U.S. 545 (1965) 17

Athletic Alternatives, Inc. v. Manufacturing, Inc., 73 F.3d 1573 (Fed. Cir. 1996) 4

Barry v. Barchi, 443 U.S. 55, No. 77-803 (1979) 7, 17, 18,20

Bates v. State Bar of Arizona, 433 U.S. 360, (1977) 2 0

Bell v. Burson, 402 U.S. 535 (1971) 19

Belle Terre v. Boras, 6 (1974) 477 U.S. 303 (1974) 8

Bracy v. Gramley, Warden, No. 96-6133, decided June 9, 1997 23

Cantwell v. Connecticut, 310 U.S. 296 (1940) 3

Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y., 447 U.S. 557 (1980) 5, 6, 19

Cleveland Bd. of Ed. v. Loudermill, 470 U.S. 532 (1986) .. 20

Cornish v. Court of Appeals of D.C., et al., No. 96-161, decided Dec. 5, 1996 and October 7, 1996, 117 S.Ct. 183 (1996) 6, 14

Davis v. Beason, 133 U.S. 333 (1890) 3

Dept. of Motor Veh. of State of California v. Rios, 410 U.S. 425 (1973) 19

Gershenfeld v. Justices of the Supreme Court of Penna., 641 F.Supp. 1419 (1986) 2 0

Gilbert v. Homar, No. 96-651, decided June 9, 1997 .... 5, 20

Gitlow v. New York, 268 U.S. 652 (1925) 2

In Re Arnett, 565 A.2d 963 (D.C. 1989) 22

In Re Chisholm, No. 94-BG-818 (D.C. Mar. 7, 1995), Md. Misc. Docket (subtitle BV), No. 27, Sept. Term 1993) 13, 21

Page

In Re Clancy, 675 A.2d 493 (1996) 22

In Re Friedman, 643 AA.2d 902 (D.C. 1993) ..... 10, .21

In Re Jeffries, No. 95-BG-1522 (D.C. 1996) 21

In Re Kersey, 520 A.2d 321 (D.C. 1987) 22

In Re O'Brien, 665 A.2d 493 (D.C. 1996) 22

In Re Roundtree, 503 A.2d 1215 (D.C. 1985) 22

In Re Ruffalo, 390 U.S. 544 ..... 5, 14, 20

In Re Samuels, 648 A.2d 943 (D.C. 1994) 22

Kansas v. Hendricks, No. 95-1649, dec. 6/23/97 7

Mathews v. Eldridge, 424 U.S. 319 (1976) 5. 15. 20

Markham v. Westview Instruments, 116 S.Ct. 1384 (1996); No. 95-26 (1996) 5

Reno v. ACLU, No. 95-511 decided June 22, 1997 3, 5, 16, 20

Selling v. Radford, 243 U.S. 46 (1917) 5, 20

Sperry v. State of Florida, 373 U.S. 379 (1963) .. 3, 5, 16, 20

Thanhauser v. Savins, 44 Md. 410 14

Theard v. United States, 354 U.S. 278 (1957) 5, 20

The Gazette Newspaper, Inc. v. The New Paper, 1996 WL 478811 (D.Md. 1996) 18, 22

Vance v. Bradley, 440 U.S. 93 (1979) 18

Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council, Inc., 425 U.S.748 (1976) 19

Waubaunsee County, Kansas v. Umbehr, 528 U.S. ____, 116 S.Ct. 2361, No. 94-1654, 95-191 (1996) 21

United States Constitution: **Page**

Article I, § 8, 10 ..... 2, 3

First Amendment 2, 3, 8, 15

Fourth, Fifth, Sixth and Seventh Amendments 3, 8

Fourteenth Amendment 2, 3, 8

Statutes:

Public Law 104-98, 15 U.S.C. § 1051, Federal Trademark Dilution Act, Section 43 ..... 2, 4, 5, 6

McKinneys, N.Y. State Domestic Rel. Law, § 11, Pocket Supp. 1997 8

D.C. Ct. of App. Rule XI:
§ 11(c) 10, 11, 18, 21, 22, 34a
§ 11(d) 3, 17, 35a
§ 13(a),(b),(c),(d),(e),(f) 13, 21, 22
§ 13(g) ..... *et passim*
§ 13(h) 4, 28a
§ 14(g) 4, 19, 13a

37 C.F.R. § 10.6 4

37 C.F.R. § 10.40 4

Fed. R. Civ. P. 9(b) 12

Act of 1669, England 3, 4

Bill of Rights of 1689, England 3, 4

Other References:

Blackstone Commentaries, Vol. IV, 151-152 3

Holy Bible, Mathew 10:34-11:1 8

Washington Post, July 9, 1997, P. A10 9

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OPINIONS BELOW

The opinion and orders of the Court of Appeals of Maryland and the District are reprinted in the Appendix at F, E, J, I, H, G, K, and L. The conflicting orders of the U.S. Tax Court and the District Court of SNDY are reprinted in the Appendix at Z, Z2, Z3, and Z4, and 2b (No reciprocity in Dist. Ct. EDNY, CAFC and S.C. of U.S.)

REASONS FOR GRANTING WRIT AND STAGE WHEN FEDERAL QUESTIONS RAISED

Public Law 104-98, effective 1/16/96, was raised in the brief before the Show Cause Hearing on 2/25/97. Lack of jurisdiction, Article I, §8, The First Amendment and Due Process Clauses were raised in Maryland and at the earliest stage possible in the District. All these latter federal questions were raised in timely request for trial in Maryland and in exceptions in the District, but were all dismissed without comment in the orders below. The unconstitutionality of §13(g), the equal protection and conflict between the state and federal courts arguments, like the other federal issues, are important to all attorneys, the public and all levels of government, and so are raised here in view of the Decisions of March 27, 1997 and April 7, 1997. App. K and L; Article I, §10 also.

STATEMENT OF JURISDICTION

The order of the D.C. Court of Appeals was dated March 27, 1997, the Order denying the petitioner's petition for rehearing was filed on May 6, 1997, and this petition was filed within ninety days thereafter, on August 1, 1997. This Court has jurisdiction to review the judgment of the District of Columbia Court of Appeals pursuant to 28 U.S.C.§1254, 1257(2) and (3), 2104, 2403(b) and 1331.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment's petition, speech and religion clauses provide in relevant part that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; . . . and to petition the Government for a redress of grievances.

Absorption of Amendment I Into the Fourteenth Amendment

These substantive personal rights were obtained by identifying them with the "liberty" that the States cannot take away without due process of law. *Gitlow v. New York,* 268 U.S. 652, 666 (1925).

The First Amendment embraces the view that it is folly to attempt to control the mental operations of persons, and to enforce outward conformity to a prescribed standard. *Davis v. Beason*, 133 U.S. 333, 342 (1890). And the Amendment embraces the concept of freedom to believe, which is an absolute right. *Cantwell v. Connecticut*, 310 U.S. 296, 303, 304 (1940). This includes the beliefs in publication, e.g., of a mark in directories, including the internet, according to accepted religious practices, which consists in freedom to lay no previous restraints upon publication thereof. See *Blackstone, Commentaries*, Vol. IV, 151-152; and *Reno v. ACLU*, No. 96-511, decided June 26, 1997.

The Right Of Petition Arose From The Magna Carta In 1215

It is an inherent right [without censorship, editing or audacious imagination, e.g., as to the meaning adopted by petitoner as his own lexicographer in a patent petition or a petition for inactivity of a mark, so as to compel testimony without petitioner's willing, knowing and intelligent cosent or waiver] to present and prepare petitions, *Act of 1669*, and all commitments and prosecutions for such petitioning are illegal. *Bill of Rights of 1689*.

The Fourteenth Amendment's Due Process and Equal Protection Clauses provide in relevant part that "No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *Amendment 4* requires probable cause for seizure; *Amendment 5* requires just compensation for taking for public use, and prevents compelled testimony in any criminal case. And *Amendment 6*, provides for the enjoyment to the right of a speedy and public trial by an impartial jury, and the assistance of counsel for defense); Amend. 7, right to jury trial.

Article I, § 8, provides in relevant part that the Congress shall have [exclusive] power to promote the progress of science and useful arts, by security for limited times to authors and inventors the exclusive right to their respective writings and discoveries.: *Sperry v. State of Florida*, 373 U.S. 379.

Article 1, § 10 clause 1, No Bill of Attainder or ex post facto laws.

STATUTORY PROVISION INVOLVED

Public Law 104-98 provides in relevant part that "The owner of a famous mark shall be entitled . . . to an injunction against another person's commercial use in commerce of a mark or trade name, if such . . . causes dilution of the distinctive quality of the mark, and to obtain such other relief as is provided . . . The term 'dilution' means the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of competition . . . , or likelihood of confusion, mistake, or deception."

Act of 1669, England.

Bill of Rights of 1689, England.

RULES

37 CFR § 10.6 provides for registration of attorney who fulfills the requirements for registration as a patent attorney. *37 CFR § 10.40* provides for mandatory withdrawal from employment if the attorney knows that client is bringing an action for purpose of harassing or maliciously injuring any person, or pursuing an illegal course of conduct, as provided in *37 CFR § 1,51(2).*

The D.C. Court of Appeals Rule XI Governing Bar, § 11(d) and 13(g) are reprinted in the Appendix at KO and M. Other relevant Rules are: 13(a)(b)(c)(d)(e)(f)(h) and 14(g).

STATEMENT OF THE CASE

The issue in this case is whether a soundly rebutted, repudiated and renounced, reciprocal, sua sponte presumption[1] of a confidential

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[1] The presumption is from an Order, mentioning a confidential petition never filed. App. B. Like other written documents such as patents, contracts and statutes, the 12/4/95 Order (APP. F.) must be interpreted by techniques that exclude extrinsic evidence that compels petitioner to testify against himself, notably by the rule of *contra proferendum. Athletic Alternatives Inc., v. Manufacturing, Inc.* 73 F.3d 1573 (Fed Cir.

personal disability[2] without rational connection to the fact proved on the face of an Order of the functional inactivity of a first common law trademark in gross under Public Law 104-98[3] can conspire to provoke a state[4] and the District of Columbia[5] in

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1996) (narrow claim interpretation where ambiguity exists); and *Markman v. Westview Instruments*, 116 S.Ct. 1114 (1996). This is the petition relied on by the Maryland Court in their 12/4/95 Order. (App. F.). Accordingly, what is not on the face of the 12/4/95 Maryland Order (App. F.) is not a "fact" upon which the 3/27/97 D.C. Order of suspension (App. K.) could base a disability under §13(g) (App. M.) Petitioner repudiates and renounces any compelled testimony about a presumption. No determination of disability or culpability was ever made and no hearings were ever allowed in Maryland. All disabilities were soundly rebutted in the District by clear and convincing evidence. (App.C, D, and Z2) This included affidavits filed in the District from physicians (App. C and D) attesting to petitioner's good health and meeting the standards for showing exceptions to reciprocal suspension in the District under D.C. Bar R. XI, §11(c). (App. N.)

[2] All information about disability is per se scandalous, and confidential even through the presumption relied on by the District of Columbia Court of Appeals in their March 27, 1997 Order, (App. K.) in fact was confidential testimony to the good health of the petitioner captioned with the first mark.

[3] First common law trademark is Cornell D. Cornish. (App. AD) Second common law trademark is Cornell D.M. Judge Cornish. (App. AO).

[4] Maryland Order of 12/4/9 seized first trademark by making it inactive and holding it in custodia legis pending trial, and in anticipation of $800 cash "replevin" bond. The Order of 2/7/96 (App. E.) was summary seizure of the first trademark without due process, a hearing, a trial or just compensation. The patent services are preempted under Article I, §8.

[5] D.C. Order of 2/20/96 (App. J.) held in abeyance petitioner's request for an oral hearing regarding first and second trademarks; Order of 4/15/96 (App. D.) was summary suspension of first trademark; Report and Recommendation of Brd. Prof. Resp. filed 7/16/96 (App. H) recommending reciprocal discipline of indefinite suspension; Order of 8/7/96 captioned with first mark acknowledged petitioners exceptions on constitutional grounds etc. in response to Brd. on Prof. Resp's report of 7/16/96 captioned with first mark recommending disability suspension of first mark under D.C. Bar R.XI §13(g) (atty. eligible for reinstatement upon showing that disability has ended); Order of 5/23/96 (App. G) captioned with first mark denied request for reconsideration of Order of 4/15/96 (App.I)

concert[6] to deny a patent, trademark and copyright attorney a prompt postdeprivation, trial[7] by an effectively permanent, per se, blanket ban and seizure of his common law trademarks[8] and his

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and the opposition thereto; (Petition for Certiorari to Supreme Ct of U.S. captioned with first mark denied 10/7/96 (App. Q) - Supreme Ct. of U.S. denied petition for rehearing on 12/2/96, (App. R) *Cornish v. District of Columbia Ct. of Appeals, et al*, No. 96-161, October Term 1996); Order of 8/7/96 captioned with first mark that on consideration of exceptions to recommendation filed 7/16/96 brief shall be filed within 40 days, and brief of Bar Counsel 30 days thereafter; Order of 8/27/96 captioned with first mark granted extension of time to file brief to 10/16/96; Order of 10/1/96 captioned with first mark lodged updated exceptions including constitutional and other objections filed as of right on 7/31/96, and denied motion for discovery; Order of 11/1/96 captioned with first mark for extension of time to file brief granted and lodged brief filed; Order 1/7/97 captioned with first mark rejected lodged supplemental brief; Motion 1/9/97 to take judicial notice of PL 104-98, request under freedom of information, notice of appearance at show cause hearing on 2/25/97, and response and exceptions to new issues raised by Bar Counsel on 12/18/96; Bar Counsel's post-argument submission to affidavit's filed and accepted by Court as evidence of famous second mark being entered on roll of attorneys in the District; Order of suspension of March 27, 1997 captioned with the second mark following request for judicial notice of PL 104-98 and evidence of abandonment of first mark in the District in 1990; Order 5/6/97 (App. L) denying request for reconsideration of order of 3/27/97, (App. K.) but not denying motion to vacate that order.

[6] Maryland Bar Counsel, by breach of confidentiality, maliciously sent with unclean hands and inequitable conduct as a hoax, an irregular confidential petition of good health to District Bar Counsel surreptitiously without petitioner's knowledge or consent on the day that PL 104-98 became effective.

[7] Petitioner may have action in replevin or abatement in release of disabilities to regain his property illegally seized as contraband per se without a trial or evidentiary postdeprivation hearing with the process due petitioner.

[8] Petitioner's property comprises his first and second above-identified common law trademarks for patent, trademark and copyright legal services, including his famous second trademark which has acquired secondary meaning by use for over 5 years in U.S. and international commerce through extensive advertising, including directories such as the internet under internet [URL] address: http://www. cornishproduction. com/JudgeCornishHome. html.

federal and state licenses[9] by prior restraint of his use and dilution of the property and title of a second, non-disabled, famouse mark in gross[10] always, regardless of constitutional[11] and statutory liability[12], including the effect of due process, equal protection, compelled testimony, the First Amendment, and Public Law 104-98 in the property, good will and title of the property of the marks whose locus is at the petitioner residence[13], even if use of the first mark is inactive, or title is held in escrow or in custodia leges by the state,[14] where there is little or no state interest, and where the coercive power of the state may not intrude with blanket bans without special care,[15] regardless of circumstances —especially when there is no probable cause, and because it is in conflict with decisions of this court regarding due process, equal protection, freedom of petition, religion and speech on the internet, and right to jury trial? *Barry v. Barchi,* 443 U.S. 55; *Mathews v. Eldridge,* 424 U.S. 319, 332-333 (1976); *In re Ruffalo,* 390 U.S. 544; *Sperry v. State of Florida,* 373 U.S. 379; *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.,* 447 U.S. 557, 566, n. 9; *Reno v. UCLA,* No. 96-511, decided June 26, 1997; *Theard v. U.S.,* 354 U.S. 278; *Selling v. Radford,* 243 U.S. 46; *Gilbert v. Homar,* No. 96-651, decided June 9, 1997. *Kansas v. Hendricks, ibid.*

Petitioner, a patent attorney, Registration No. 19,240 under *37 CFR §10.6,* alleges that the use and title of his famous mark, whose locus

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[9] His federal license includes copyright services before the U.S. copyright office. He also has been qualified under Registration No. 19,240 before the U.S. Patent and Trademark Office for almost 40 years.

[10] His second mark is famous under PL 104-98.

[11] Article I, §8, and Amendments 4, 5, 6, 76 and 14.

[12] Article I, §8, and Amendments 4, 5, 6, and 14.

[13] The situs of the property in the first and second marks is at the residence of the petitioner.

[14] Maryland seized his first mark in custodia leges — likened to a stay until recovery in an action having a two year statute of limitations.

[15] Special care is required because petitioner's first mark was seized on 4/15/96 and his second mark was effectively permanently seized on 3/27/97 without a trial and without his consent or a waiver of his constitutional rights on the basis of an invalid presumption that spreads rumor of disability and scandal without any probable cause to believe such scandal or disability exists.

is at his residence, and the good will attached thereto are protected from per se prior restraint and seizure without just compensation without a trial, and from dilution under *Public Law 104-98* by lack of jurisdiction in the preempted fields of patent law and copyright law under *Article I, §8;* by lack of probable cause; by the right of petition, religion and speech; equal protection with like attorneys who become "inactive" voluntarily; and the right to notice and a timely hearing under the Due Process Clause of the *14 Amendment*. Specifically petitioner claims that benefit of *Article I, §8, 10,* the *1st, 4th, 5th, 6th, 7th* and *14th Amendments* of the U.S. Constitution, and protection against dilution under *Public Law 104-98*. He further alleges that *D.C. Bar R.XI, §13(g)* is unconstitutional as applied here because of the court's broad substantive, non-remedial sanction that makes patently offensive a man's trademark that bears the name of a prophet.[16] [17] *Mathew 10:34-11:1.* Petitioner also claims lack of jurisdiction to suspend his license and seize title to his marks twice, once by compelling him to testify against himself on the basis of a confidential, fraudulent petition, under his famous common law mark that uses the religious name "JUDGE" from the bible and once by compelling him to testify against himself on the basis of a fraudulent confidential petition under an inactive mark which was used as a confidential security in lieu of and in anticipation of an $800 cash trial bond in Maryland, where petitioner is forced to recover his property wrongfully seized as contraband per se by an action in replevin within the two year statute of limitations, abatement and cancellation of the Order of inactivity, and relief from civil disabilities; and he challenges the prior restraint, dilution and blanket seizure of his famous common law mark, which uses the name "JUDGE", since it was adopted according to accepted religious practice in advertising in directories, e.g., on the internet.

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[16] Book of Judges in Holy Bible.

[17] Petitioner is also a retired justice of Village of Belle Terre. See *Belle Terre v. Boras*, 94 S. Ct. 1536 (1974). Under NY Law, §11 Domestic Rel. Law., a retired justice can perform marriage ceremonies. McKinneys Pocket Sup. 1997.

OTHER MATERIAL ESSENTIAL TO UNDERSTAND PETITON

Internet hits up to 150 million in 5 days have been recorded in the Washington Post, 7/9/97, p. A10. In such a vehicle of extraordinery use, petitioner's famous mark has acquired secondary meaning and good will for five years, all of which is a recognizable property interest.

He claims there is no rational connection between the ultimate fact presumed and the fact proved. The *fact proved* is that, on 12/4/95, Maryland, in anticipation of petitioner's voluntary inactivity of a first trademark and a $800 cash bond for security at trial, issued an Order (App. F) of *unconditioned inactivity* captioned only against a first inactive mark that could be held in custodia leges pending the conclusion of the trial in Maryland. The District of Columbia, in concert with Maryland, sent out a show cause reciprocal disciplinary letter on 12/21/95 captioned against the inactive mark while petitoner's request for a trial and his $800 cash bond against the inactive mark were being held in Maryland.

The District temporarily *suspended* the license and seized the inactive first mark in custodia leges on 4/15/96 (App. I) based on a confidential joint petition filed by breach of confidentiality on the perverse, per se, sua sponte reciprocal presumption that there was a personal disability without any hearing to determine the same. This was effectively a disbarment and destruction of the seized mark because the license and the mark might never be allowed to be recovered.

The District gave the petitioner a show cause hearing on 2/25/97 captioned against the first mark. However, they did not meet the standards for reciprocal discipline under §13 of their rules for determining disability of the person. They effectively permanently *suspended* him on 3/27/97 on a presumption of disabiity under D.C. Bar R. XI, §13(g). Also, he was effectively permanently deprived of his second famous mark by prior restraint and dilution of the good will and use that incorporates the name "JUDGE", despite the prohibition of

Public Law 104-98. A postdeprivation trial or hearing to vacate and strike the deprivation of petitioner's above captioned famous mark by dilution was denied on 5/7/97 (App. L). The result is that the latter mark is also being held in custodia leges as contraband per se until it is recovered in a replevin action, and/or the Order of 3/37/97 is abated and vacated and relief of disabilities is granted.

The fact presumed is disablement under D.C. Bar R.XI, §13(g) (App. M). The Hobson's choice peitioner is instructed to take is an application for reinstatement allowed once a year from the filing of an affidavit on July 29, 1996 under §14(g), which is near the end of the statute of limitations for replevin in Maryland. (Bar Counsel, however, argued that the one-year limit prescribed by §13 is moot, since petitioner has been inactive for one year from 12/4/96, and citing *In re Friedman*, 643 A.2d 902 (D.C. 1993) in his Post Argument Submission filed on March 3, 1997, Bar Counsel recommended nunc pro tunc effect to January 2, 1996 for calculation of the beginning of the year term because petitioner "has complied with his obligations under D.C.App.R.XI,§14").

This first and ultimate unproved presumption is based on a still further untested and now rebutted, repudiated and renounced presumption that: "The Maryland court acted in response to a petition filed jointly by the Attorney Grievance Commission and the respondent". The confidential petition originally signed by Bar Counsel is reprinted In Appendix B. However, it was rejected by petitioner and, so, was never filed. Petitioner has made timely exceptions under §11(c) (App. N) to such presumptions on 7/31/96 and 9/13/96. He repeatedly asked for an evidentiary trial or hearing to show the lack of any such "joint" petition or any alleged disability. He offered clear and convincing evidence that no disability exists and that no such petition exists, except a fraudulent petition filed in breach of confidentialy, that is indistinguishable from any other voluntary petition for "inactivity". It requires audacious imagination to state that such a fraudulent "joint"petition should reciprocally suspend one because he is "disabled" under D.C. BarR. XI, §13(g).

Since there is no rational connection between the petition presumed and the fact proved, there is and can be no independent, compelling and direct evidence in the record that such a connection exists or that the necessary and sufficent requirement of §13(g), namely "disability" of petitioner, exists.

The Order is also unconstitutional under the equal protection clause because it presumes that there are different kinds of "inactivity" in reciprocal cases than there are with a voluntary petition for inactivity. There is no condition on the "inactivity" in the Order and extrinsic evidence is not allowed to show that the Order was other than a "voluntary inactivity." See note 2. Put another way, different classifications such as these can be overturned because the varying treatment of the different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that it can only be concluded that the court's action was irrational.

The Maryland court's action is irrational because it is grossly unjust to claim under §11(c) that inactivating a mark somehow disables a non-culpable, non-disabled attorney. Likewise, it is impossible for the Order to be followed by the Clerk of the Court who is directed to remove "the name of Cornell D. Cornish from the register of attorneys" in Maryland when no such name exists or ever existed on their attorney rolls. See App. A and AA.

The Maryland court's action is also irrational because it is impossible to inactivate an attorney except upon his voluntary petition or upon probable cause. Attorneys frequently petition for inactivity, such as when they temporarily move to a foreign country, go on an extended vacation, or even because they chose to care for a disabled relative, friend or seek a non-disabled attorney, but none of these reasons even vaguely approaches what could be identified or articulated as probable cause of a disability under Maryland BV1i, or D.C. Bar R.XI, §13(g).

The Maryland Order is irrational, because the alleged petition on its face was obviously technically fraudulent, irregular, altered,

filed in breach of confidentiality and never originally signed by Bar Counsel. It clearly carried no original signature of Bar Counsel, so by definition it was impossible for it to be a "joint" petition made and filed by regular procedures. It was likewise impossible for the Maryland court to have "acted in response to a petition filed jointly by the Attorney Grievance Commission and the respondent" or to have anyone come "before the Court on a Petition filed jointly by the Attorney Grievance Commission and the respondent".

As provided in Fed. R. Civ. P. 9(b), which applies to the sufficiency of a pleading that contains a claim of fraud, in all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity and that malice, intent, knowledge and other conditions of mind of a person may be averred generally. In this case, there was an untested, technically fraudulent and irregular petition without Bar Counsel's original signature. It was sent to the District of Columbia with knowledge that it wasn't originally signed by Bar Counsel after it was altered in a material way. It was sent there with malice against the petitioner's mark "JUDGE" because that mark was patently objectional to Bar Counsel. The petition was sent with unclean hands, and by inequitable conduct to the District of Columbia on January 16, 1996, surreptitiously without peitioner's knowledge or consent, while petitioner was waiting for his promised Maryland trial, and while his $800 cash bond was in the hands of the Maryland Bar Counsel. This was the very day that Public Law 104-98 became effective as a vehicle to prevent the malicious dilution of petitioner's famous mark under Public Law 104-98 for both nonpreempted advertising and advertising preempted under Article I, §8, which applies, inter alia, to patent law services. Article I, §10 also applies.

The fact proved is that the Maryland Order of 12/4/95, was a non-final order of voluntary inactivity that stayed further proceedings in connection with petitioner's first mark. The ultimate untested fact presumed is that petitioner is disabled under D.C. Bar R.XI, §13 (App. M) and agrees to the seizing of his title to his mark, which is the caption used in this petition for a writ of certiorari, and which

is the name under which he is admitted in both Maryland and the District of Columbia. Petitioner's claim is that prohibiting a stay of his suspension pending an examination or a hearing under §13 denied him equal protection of the laws, since in the context of contested non-reciprocal proceedings, in contrast to contested nonreciprocal or nonreciprocal procedings, permanent suspension is stayed or can always be stayed pending an examination and hearing. Likewise, voluntary inactivity is ordinarily never equated with a suspension.

The District conspired to uphold the evidentiary presumption of disability without a rational connection to the fact proved, concluding that: "We have consistently taken this course of action in reciprocal proceedings involving the imposition of inactive status by court order in Maryland pursuant to a joint petition". This is contrary to the facts. They have only done so in *uncontested* reciprocal proceedings, such as were present in all the citations given by the District. They do not consistently do so in *contested* reciprocal proceedings, which this case clearly is. See *In re Chisholm,* No. 94-BG-818 (D.C. Mar. 7, 1995) Md. Misc. Docket (Subtitle BV) No. 27 Sept. Term 1993), in which the District dismissed a reciprocal proceeding without a showing of fitness in which the attorney was inactivated in Maryland and promptly reinstated in the District without any proof of fitness other than his reinstatement in Maryland because the attorney was no longer disabled.

The District's definition of attorney responsibiity and ability to perform in the context of jurisdictional and constitutional liability is, therefore, not reasonably related to the interests involved or relied on by the District of Columbia Court of Appeals, and, given the rebuttable nature of reciprocal presumptions, the high standard of accountability for disability without a prompt evidentiary hearing is unconstitutional and without rational basis, probable cause, or adequate assurance that the suspension is not unjustified, especially in the postdeprivation stage.

Furthermore, the prior restraint on speech by the permanent dilution of petitioner's famous mark is not narrowly tailored to achieve these objectives, since it applies to truthful speech that is substan-

tially unlikely to have a materially prejudicial effect, is not neutral to preempted speech by a patent attorney, and permanently bars speech by prior restraint. Petitions allow a petitioner to be his own lexicographer, just as a patentee is. He should not be compelled to be a witness against himself. *In re Ruffalo,* 390 U.S. 544. See also *Thanhauser v. Savins,* 44 Md. 410, which held that if the plaintiff's name is changed the party is changed as far as the record is concerned; and no provision is made in Maryland for the misnomer of the plaintiff.

Furthermore, petitioner alleges that §13(g) is unconstitutional under the Due Process Clause since it permits the District "irreparably" and permanently to "sanction" a non-disabled attorney and seize his famous mark by prior restraint without a presuspension or a prompt postsuspension trial or hearing in violation of petitioner's right to due process and a jury trial under Public Law 104-98 and otherwise. The court further ignored §11(c) as to petitioner's exceptions to the difference between the procedures applicable to *contested* and *uncontested* reciprocal proceedings.

The petition for certiorari of the presuspension stage was denied on 10/7/96 in *Cornish v. District of Columbia Court of Appeals, et at, No. 96-161,* apparently in anticipation of *Gilbert v. Homar, No. 96-651,* decided June 9, 1997. In this Court now, the petitioner still adheres to his fundamental position that, as a constitutional matter, he is entitled to more process than he was given or can get under §13(g).

Even if §13(g) does not affront the Due Process Clause by authorizing summary suspensions without a presuspension hearing, and even if this Court disagrees with petitioner's contrary contention, this Court can and should conclude that petitioner was not assured a sufficiently timely postsuspension hearing and notice, and §13(g) was unconstiutionally applied in this respect.

It must be conceded that, under Maryland and District of Columbia law, petitioner has a property right to use his famous common law mark free of prior restraint or dilution under the preemption

of Public Law 104-98, and the First Amendment law of prior restraint. Thus, Maryland and the District have no right or jurisdiction to dilute his famous mark by using his inactive mark in Orders of suspension, which is what they did in their Orders of December 4, 1995 (Maryland); February 7, 1996 (Maryland); April 15, 1996 (D.C.); May 23, 1996 (D.C.). Neither do they have the right or jurisdiction to effectively permanently dilute his famous mark out of existence by a per se prior restraint based on an untested presumption in their deprivation Order of March 27, 1997; or their per se postdeprivation Order of May 6, 1997, where there is no ready remedy for recoupment of losses should the suspension prove to be erroneous.

Unquestionably, the magnitude of an attorney's property interest in earning a living with his license and his famous common law mark is substantial; and D.C. has a relatively unimportant interest when no complaint has been filed against petitioner in the D.C., and no grievance proceeding is planned against petitioner there at present. Thus, the District is duty bound to provide prompt judicial hearings and examinations that would definitely determine the issues, including satisfactory establishment of probable cause. In such circumstances, the District's interest in preserving the public from harm by an effectively permanent sanction of the attorney and his famous mark has not become acute. At the same time, moreover, there is no substantial assurance that the attorney's interest is not being baselessly compromised in this or other jurisdictions.

Under this standard, petitioner has not received all the process that was due him either prior to or after the suspension of his license and prior restraint of his famous mark in the District. *Mathews v. Eldridge*, 424 U.S. 319, 332-333 (1976) There was reckless disregard of the truth that the presumed petition was shamelessly palmed off falsely with unclean hands, and by inequitable conduct to maliciously seize a famous mark using the name "JUDGE". To establish probable cause, the State should have postponed a suspension pending a prompt adversary hearing to resolve questions of credibilty and conflicts of evidence. See this Court's Rule 8, which

requires an order suspending the member listed on its rolls of attorneys to be afforded an opportunity to show cause, within 40 days, why a disbarment order should not be entered; and after a reasonable notice and opportunity to show cause, a hearing if material facts are in dispute. An untested presumption from a foreign jurisdiction, not under oath, supplied surreptitiously to dilute petitioner's famous mark while he was awaiting a hearing in Maryland would not appear sufficiently reliable to satisfy constitutional requirements. See the prompt dismissal of the show cause order of the U.S. Tax Court in their corresponding reciprocal case. App. Z2.

As for petitoner's culpability, none was shown and none alleged in the District. Petitioner had a right under 37 CFR §1.56 and §10.40 to use his famous mark to identify himself in provisional patent application No. 60/001998, filed on August 7, 1995 under his First Amendment right of speech and petition. Maryland lacked jurisdiction to determine the identity of the inventive entity, which was preempted under Article I, §8. *Sperry v. State of Florida*, 373 U.S. 379. There was no inference of culpability or disability in any of this First Amendment speech or petition activity. Since petitioner's speech in advertising on the internet was suppressed by prior restraint effectively permanently, the suppression must be reviewed, and it must be reviewed with "special care". *Central Hudson Gas & Electric Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 566, no. 9; Reno v. ACLU, No. , decided June 1997; *Sperry v. State of Florida*, 373 U.S. 379.

At every turn, starting from his predeprivation and post deprivations in Maryland and the District, petitioner petitioned for relief from the constitutionally infirm procedures and Orders. He repeatedly pointed to legitimate constitutional and jurisdicational "claims of entitlement . . . that he may invoke at a hearing." *Barry v. Bachi*, op. cit.

Section 13(g) has no provision for a prompt postdeprivation hearing as of right, and, therefore, is unconstitutional. As a threshold matter it is clear that petitioner has a property interest in his license and in his famous mark to invoke the protection of the Due Pro-

cess Clause and the First Amendment The burden of proof is on the District under §13(d) to show probable cause that he is disabled under §13(g). It is unarguable that they have the burden of proof and have not met their burden of proof.

Even if the State's presuspension procedures were satisfactory, however, that still leaves unresolved how and when the adequacy of the grounds for suspension, prior restraint and dilution are ultimately, if ever, to be determined.

The interpretation of the irregular petition taken out of context by the audacious, imaginative and unconstitutinal presumption by the D.C. Court is unacceptable. It will never be possible to show evidence that the disability was ever identified or determined, or "has ended", as required by §13(g). No disability has been identified and no notice of one has been given. If an opportunity for a hearing were given, the District would be hard pressed to find or determine that petitioner's "lack of any disability could ever be severe." And surely it is deeply rooted by long lasting, well established tradition and precedent in this Court that the opportunity to be heard must be "at a meaningful time and in a meaningful manner." *Barry v. Barchi,* 443 U.S. 55, citing *Armstrong v. Manzo,* 350 U.S. 545 (1965).

Here, under §13(g) petitioner is suspended until at least July 29, 1997. It is certain that the petitioner and others subject to such lengthly suspensions will have no oppportunity to put the District to its proof until they have suffered the full penalty imposed. Yet it is possible that petitioner may not have been disabled under §13(g). Once suspension has been imposed, the attorney's interest in a speedy resolution of the controversy becomes paramount. And there is little or no discernible State interest, and the State has suggested none, in an appreciable delay in going forward with a full hearing. It would seem as much in the State's interest as the petitioner's to have an early and reliable determination with respect to the integrity of those admitted to the District bar.

In those circumstances, it is necessary that petitioner be assured

a prompt postsuspension hearing, one that would proceed and be concluded without appreciable delay. Because D.C. Bar R §13(g) is deficient in this respect, petitioner's suspension is constitutionally infirm under the Due Process Clause of the Fourteenth Amendment.

REMAINING QUESTIONS

The question remains whether the State's prior restraint of petitioner and his famous common law mark; broadly lumping him in with attorneys in uncontested reciprocal proceedings; ignoring his preempted activities under Article I, §8, and failing to give him the same protection as other attorneys who petition for voluntary inactivity denies him the equal protection of the laws. (Also §10.)

The cases cited by the District acknowledge that attorneys can voluntarily become inactive, in which case they can make exception to their suspension in the District. The District Court fails to acknowledge that petitioner has contested this under §11(c), and has made pre- and postdeprivation constitutional exceptions to his suspension and dilution of his famous mark by prior restraint without a trial or hearing by ex post facto application under §13(g).

Here the different treatment of the different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that it can only be concluded what D.C.Bar R. XI,§13(g) is irrational. *Barry v. Barchi,* op cit., citing *Vance v. Bradley,* 440 U.S. 93, 97 (1979).

The well established, longlasting and deeply rooted traditions and holdings of this Court makes clear that the preemption of Article I, §8, and the First Amendment are applicable to advertising on the internet by patent attorneys whose marks are famous under Public Law 104-98, enacted January 16, 1996 or otherwise. 112 *Reno v. American Civil Liberties Union,* No. 96-511, June 26, 1997, *Sperry v. State of Florida,* 373 U.S. 379; and see *The Gazette Newspaper, Inc. v. The New Paper,,* 1996 WL 478811 (D.Md. 1996).

Referring to the cited cases in the Order of March 27, 1997 (App.

K, note 3), it is unarguable and admitted that rules §13(g) and §14(g) are not entirely clear, and that in the prior cases cited that deal "with the effect here of Maryland inactive status impositions, we appear to have interpreted §13(g) as making an attorney eligible for reinstatement only after a year has passed, absent court order shortening that interval, and to measure that period dependent upon the filing of the affidavit required by §14(g)." These rules are so vague and indefinite, therefore, as to be unconstitutional because it is impossible to apply them equally. The application of §13(g) should be subject to the same strict regulation when the disability is ended in Maryland as when the disability never existed. The two different categories should be indentically regulated in all respects. The judicial facts on which the classifications are apparently based could not reasonably be conceived to be true by the judicial decisionmaker. They cannot per se seize petitioner's license and famous mark as contraband per se and hold them permanently in custodia leges for a fair, full and evidentialy hearing which they may never allow and, under the rules, cannot allow. Indeed, under the rules, petitioner can never ask for a postsuspension reinstatement hearing based upon the ending of a disability that never occurred.

As to preempted and non-preempted categories of attorneys who advertise marks on the internet, their suspensions should be treated equally by coordination between the State and the federal government. *Sperry v. State of Florida*, op cit. As to prior restraint of publication of that portion of an attorney's practice that is not preempted, prior restraint should be treated the same as any other prior restraint of commercial advertising by a licensed professional, especially when the prior restraint is effectively permanent, as it is here, i.e., with care. *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 566, n.9.

The prior restraint of advertising by a patent attorney or a druggist are subject to the same First Amendment treatment. *Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976), *Dept. of Mtr. Veh. of State of Cal. v. Rios*, 410 U.S. 425; *Bell v. Burson*, 401 U.S. 535, 539 (1971).

See also *Bates v. State Bar of Arizona*, 433 U.S. 365, 353-354 (1977).

The State could not reasonably conclude that the denial of a timely postdeprivation hearing to a lawyer was more important than the denial of such a hearing for a driver's license to a physician or reporter or a druggist's advertisement under the First Amendment. The failure to ratify fraud, coercion, malice or bias and/or conspiracy between Bar Counsels, is an important protection of the public that fosters public confidence in the disciplinary system. It is easy for Bar Counsels to conspire without public scrutiny and make sweetheart deals with attorneys who go inactive and then seek reinstatement. To this end, the District case increasingly conspire to ratify Maryland presumptions by applying them per se in the District with a zero tolerance for exceptions by the petitioner under §11(c). This is in conflict with this Court's decisions in *In re Ruffalo*, 390 U.S. 544; *Sperry v. State of Florida*, 373 U.S. 379; *Theard v. U.S.*, 354 U.S. 278; *Selling v. Radford*, 243 U.S. 46; *Barry v. Barchi*, 443 U.S. 55; *Reno v. UCLA*, No. 96-511, decided June 1997; and *Gilbert v. Homar*, No. 96-651, decided June 9, 1997.

The petitioner has been irreparably damaged by prior restraint and constitutionally deprived of his property and due process of law without notice or opportunity of a trial in Maryland, the District of Columbia and the District Court, S.D.N.Y., even though he has presented clear and convincing evidence of a legitimate "claim of entitlement . . . that he may invoke at a hearing." *Barry v. Barchi* op. cit, page 66, note 11; *Gilbert, et al. v. Homar*, No. 96-651, decided June 1997; *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532 (1985); *Gershenfeld v. Justices of the Supreme Court of Pa.*, 641 F.Supp. 1419.

In this connection, there is a conflict in the states and the federal district courts. See Table of Contents. The District Court of the S.D.N.Y and the District of Columbia Court of Appeals were dragooned by a fraudulent copy of an irregular, confidential petition into permanently suspending petitioner without any hearing to determine any disability. They acted only on the presumption of a disability. The U.S. Tax Court, however, acted to discharge their

identical reciprocal show causes order. (App. Z2) And all other federal and state courts having jurisdiction have refused to even issue an identical show cause order. These include: the State of New York, the District Court of the E.D.N.Y, the CAFC, and the Supreme Court of the United States.

In view of this conflict, and the obvious interest of attorneys and the public in the rules governing postdeprivation hearings, this case is ripe for resolution and of importance to this court and the public. If this court approves the suspension of the petitioner here, it will endorse his permanent deprivation of a hearing everywhere and like permanent deprivation of others.

The District of Columbia Court of Appeals should not use per se ratification of presumptions in reciprocal cases, as this works to ratify Maryland's unsupervised, discretionary presumptions. It invites manipulation and avoids constitutional liability by simply labeling the petitioner as "suspended" under §13(g). There is no timely evidentiary hearing, determination of "mentally abnormal" or "mentally ill", or application for medical examination under §13(b), (c), (d) and (f). And it ignores the standards for reciprocal discipline under 11(c). It also sua sponte, adds a non-identical requirement for reinstatement, only at least after one year under §13(g), with the time being measured by §14(g). And it doesn't treat all attorneys alike. See *In re Chisholm*, No. 94-BG-818 (D.C. Mar.7, 1995), Md. Misc. Docket (Subtitle BV) No. 27, Sept. Term 1993); *In re Jeffries*, No. 95-BG-1522 (D.C. 1996); *In re Friedman*, No. 93-BG-14 (D.C. 1994); and *Wabaunsee County Kansas v. Umbehr*, 518 U.S. ____, 116 S.Ct. 2361, 135 L.Ed. 2d 843 (1996).

Maryland had no standard for "inactivity" under Rule BV1i or otherwise, and the District has none for functionally identical reciprocal disability suspension under Rule §13(g) except Rule 11(c), which was ignored and not applied constitutionlly in this case.

In the District, under §13(g) the petitioner has no way of showing that a non-existent or fanciful "disability" has "ended." This makes it impossible to show that the law of disability "determina-

tion'' and ''ending'' in Maryland and the District are similar and consistent. See *In re Roundtree*, 503 A.2d 1215 (D.C. 1985), regarding a requirement to prove fitness. The Court of Appeals must make an independent determination of petitioner's fitness based on D.C. law.. See *In re Arnett*, 565 A.2d 963, n.1 (D.C.1989). However, the law of Maryland and the District are dissimilar. See *In re Kersey*, 520 A.2d 321 (D.C. 1987).

The problem arises because Maryland BV1(i) invites manipulation by Bar Counsel simply by attaching the label ''inactive'' to particular attorneys to avoid the requirements for a retirement under BV12 or a waiver of constitutional rights by so-called sweetheart deals.

Under §13(e), the Court has adopted discretionary, Maryland presumptions, such as was claimed by an attorney under §13(e) in *In re Dick*, 683 A.2d 159 (D.C. 1996), and *In re Samuels*, 648 A.2d 943 (D.C. 1994). They also ratified an unarticulated disability. See *In re O'Brien*, 665 A.2d 493 (D.C. 1996), in which a petition that the attorney is ''unable to cope with the demands of the practice of law'' was held by the District of Columbia Court of Appeals to be a claim of attorney ''disability'' under §13(e). This could also include an ''inability'' due to a disability of an attorney's wife. See *In re Clancy*, 675 A.2d 493, which used the Maryland standard of fanciful ''inactivity'' when the attorney's wife was disabled. There, this was turned into a ''disability'' claimed by the attorney rather than the wife under §13(e) in the District.

In contrast, petitioner is not reciprocally suspended under §13(e). Petitioner made timely exceptions to the predeprivation and postdeprivation per se seizures with zero tolerance for any claim of entitlement to a hearing under §11(c). He was suspended under §13(g) based upon illegal malice, bias and coercion in Maryland against petitioner's identity. And the District suspended petitioner in violation of Public Law 104-98 under a fictional court presumption that diluted the petitioner's famous mark out of existence by prior restraint, and holds it is custodia legis by a per se seizure as contraband per se. See *The Gazette Newspapers, Inc. v. The New*

Paper, 1966 WL 478811 (D.Md. 1996).

It is important to prevent bias in Maryland from dragooning the District into accepting the hoax of a fictional presumption in the District by commandeering the D.C. Bar Counsel and the D.C. Board of Professional Responsibility into using that presumption rather than their own standard under §11(c). Due process requires a fair trial before a judge without actual bias in disciplinary actions. See *Bracy v. Gramley, Warden,* No. 96-6133, decided June 9, 1997.

CONCLUSION

The petitioner respectfully submits that his petition for a *Writ of Certiorari* to the District of Columbia Court of Appeals should be granted in view of the above.

Respectfully submitted,

Cornell D.M.Judge Cornish
Attorney Pro Se Admitted to the
Supreme Court of the United States
1101 New Hampshire Ave., NW
Washington, D.C. 20037
(.202) 429-9705

APPENDIX F

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND	*	IN THE COURT OF APPEALS OF MARYLAND
100 Community Place	*	Misc. Docket (Subtitle BV)
Suite 3301	*	No. 39
Crownsville, Maryland 21032	*	September Term, 1995
Petitioner	*	
v.	*	
CORNELL D. CORNISH	*	RECEIVED
1101 New Hampshire Ave., N.W.	*	Dec 5 1995
	*	Attorney Grievance Commission
Suite 301	*	
Washington, D.C. 20036	*	
Respondent	*	

ORDER

This matter came before the Court on a Petition filed jointly by the Attorney Grievance Commission and the respondent, Cornell D. Cornish, for the respondent to be placed on inactive status. The Court having considered the Petition, it is this 4th day of December, 1995,

ORDERED, by the Court of Appeals of Maryland, that the Petition for Inactive Status be and it is hereby GRANTED, and the respondent shall be placed on inactive status from the practice of law, and it is further

ORDERED, that the Clerk of this Court shall remove the name of Cornell D. Cornish from the register of attorneys in this Court and certify that fact to the Trustees of the Clients' Security Trust Fund and the clerks of all judicial tribunals in this State in accordance with Rule BV13.

/s/ ROBERT C. MURPHY
CHIEF JUDGE

APPENDIX E

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND	*	In the
	*	Court of Appeals
	*	of Maryland
Petitioner	*	Misc.Docket
v.	*	(Subtitle BV)
CORNELL D. CORNISH	*	No. 44
Respondent	*	September Term 1995

ORDER

The Court having considered the request for dissolution or amendment of inactive status of respondent and the response filed thereto by the Attorney Grievance Commission, it is this 7th day of February, 1996,

ORDERED, by the Court of Appeals of Maryland, that the request for dissolution or amendment of inactibe status be, and it is hereby, **DENIED.**

/s/ ROBERT C. MURPHY
CHIEF JUDGE

APPENDIX J

DISTRICT OF COLUMBIA COURT OF APPEALS

FEB 20 1996

No. 95-BG-1830

In the Matter of
CORNELL D. CORNISH, ESQUIRE
A Member of the Bar of the
District of Columbia
Court of Appeals **BDN: 507-95**

BEFORE: Ferren and King, Associate Judges; and Kern, Senior Judge.

O R D E R

On consideration of Bar Counsel's petition that the Court impose a temporary suspension of respondent, a member of the Bar of the District of Columbia, pursuant to Rule XI, § 11 (d) of the Rules Governing thhe Bar of the District of Columbia, respondent's initial opposition and request for an extension of time to obtain counsel, respondent's amended opposition, request for an extenbsion of time to obtain counsel, and request for oral argument, and Bar Counsel's reply thereto, it is

ORDERED that respondent's motion for an extention of time to obtain counsel is granted and respondent shall notify this Court within 30 days from the date of this order as to the identity of counsel for respondent, along with any additional responsive pleadings pertaining to the Court's imposition of a temporary suspension of respondent, It is

FURTHER ORDERED that Bar Counsel's request that the Court issue an order suspending respondent from the practice of law in the District of Columbia shall be held in abeyance pending respondent's compliance with this order. It is

FURTHER ORDERED that respondent's request for oral argument is held in abeyance.

PER CURIAM

Copies to:

Cornell D. Cornish, Esquire
1101 New Hampshire Avenue, N.W.
Susite 301
Washington, D.C. 20037

Hamilton P. Fox, Esquire
Chair
Board on Professional Responsibility

Leonard H. Becker, Esquire
Bar Counsel
Office of Bar Counsel

emb

APPENDIX I

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 95-BG-1830

FILED
April 15, 1996
COURT OF APPEALS

In the Matter of
CORNELL D. CORNISH, ESQUIRE
A Member of the Bar of the
District of Columbia
Court of Appeals

BEFORE: Ferren and King, Associate Judges; and Kern, Senior Judge.

O R D E R

On consideration of respondent's motion to amend the proposed order the changing respondent's name from Cornell D. Cornish to Cornell D.M. Judge Cornish and motion to appoint attorney for respondent and third amended opposition to proposed order suspending respondent from the practice of law in the District of Columbia pending final disposition of this proceeding and answer to the proposed order to show cause and allowing respondent's name to be voluntarily removed from the register of attorneys allowed to practice in the District of Columbia and Bar Counsel's response thereto, and on further consideration of this Court's order of February 20, 1996, which held in abeyance Bar Counsel's request that the Court issue an order imposing a temporary suspension of Cornell D. Cornish, Esquire, a member of the Bar of the District of Columbia, pursuant to Rule XI, § 11(d) of the Rules Governing the Bar of the District of Columbia, it is

ORDERED that respondent's motion to amend the proposed order by changing respondent's name from Cornell D. Cornish to Cornell D.M. Judge Cornish is denied. It is

FURTHER ORDERED that respondent's motion for appointment of counsel is referred to the Board on Professional Responsibility. It is

FURTHER ORDERED that respondent's motion to voluntarily remove his name from the register of attorneys admitted to practice in the Districtof Columbia is denied. It is

FURTHER ORDERED that portion of this Court's order which held in abeyance Bar Counsel's request that the Court issue an order suspending respondent from the practice of law in the District of Columbia is hereby vacated. It is

FURTHER ORDERED that the respondent Cornell D. Cornish is hereby suspended from the practice of law in the District of Columbia pending final disposition of this proceeding, and it is

FURTHER ORDERED that Bar Counsel inform the Board on Professional Responsibility of his position regarding reciprocal discipline within 30 days of the date of this order. Thereafter, respondent shall show cause before the Board on Professional Responsibility, if cause there be, within 10 days why identical greater or lesser discipline should not be imposed in the District of Columbia, it is

FURTHER ORDERED that the Board on Professional Responsibility is directed to recommend promptly thereafter to this Court whether identical, greater or lesser discipline should be imposed as reciprocal discipline or whether the Board, elects to proceed *de novo* pursuant to Rule XI, § 11. It is

FURTHER ORDERED that respondent's attention is drawn to the requirement of D.C. App. Rule XI, § 14 relating to suspended attorneys and to the provisions of § 16 (c) dealing with the timing of eligibility for reinstatement as related to

compliance with § 14, including the filing of the required affidavit. It is

FURTHER ORDERED that the Clerk shall cause a copy of this order and the order of the Court of Appeals of Maryland to be directed to the Chair of the Board on Professional Responsibility and transmitted to the respondent. It is

FURTHER ORDERED that Bar Counsel advise the Court if the matter is concluded without the necessity of further Court action.

PER CURIAM

Copies to:

Cornell D. Cornish, Esquire
1101 New Hampshire Avenue, N.W.
Suite 301
Washington, D.C. 20037

Hamilton P. Fox, Esq.
Chair
Board on Professional Responsibility
515 5th Street, N.W.
Building A, Room 101
Washington, D.C. 20001

Leonard H. Becker, Esquire
Bar Counsel
Office of Bar Counsel
515 5th Street, N.W.
Building A, Room 127
Washington, D.C. 20001

APPENDIX H

DISTRICT OF COLUMBIA COURT OF APPEALS BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	)	
	)	
CORNELL D. CORNISH	)	Bar Docket No. 507-95
	)	
Respondent	)	

ORDER

This is a reciprocal matter from the State of Maryland. On December 4, 1995, Respondent was placed on inactive status by order of the Court of Appeals of Maryland. The order placing him on inactive status was reported to the District of Columbia Court of Appeals. Respondent filed a brief in the D.C. Court of Appeals seeking relief in several areas, including the appointment of counsel. By order dated April 15, 1996, the Court of Appeals suspended Respondent, pursuant to D.C. App. R. XI, Section 11(d), and directed the Board of Professional Responsibility to recommend promptly whether reciprocal discipline should be imposed. The Court of Appeals also referred to the Board Respondent's Motion for Appointment of Counsel. The Executive Attorney, prior to the action of the Court of Appeals, had written Respondent a letter dated April 1, 1996, explaining to him the Board rules for appointment of counsel. In addition to attaching copies of the relevant rules, she explicitly informed him that he must file the appropriate motion and an affidavit of indigency and requested a copy of his most recent federal or state income tax return or other document certifying his gross income for the past 12 months.

Respondent replied by letter dated April 4, 1996 requesting that counsel be appointed so that counsel could draw up the affidavit and motion necessary for the appointment of

counsel. Enclosed was one page from his 1994 income tax return that indicated the he had self-employment income of slightly more than $1,000. There was no affidavit of indigency, and he did not enclose the complete return.

The Board is unwilling to appoint counsel for respondents who fail to file the requisite affidavit in support of indigency. This failure plus the failure to submit a complete copy of his most recent tax return gives us concern whether Respondent is in fact indigent. The affidavit is a relatively simple form, that would take no more time to execute than the letter that Respondent has already filed with the Board, and much less time to execute than the brief of 21 pages plus attachments, which Respondent filed with the Court of Appeals.

Upon consideration of the foregoing it is hereby

ORDERED that appointment of counsel for Respondent is denied, without prejudice to reconsideration should Respondent file the required affidavit and his most recent tax return.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: /s/ Hamilton P. Fox, III
Hamilton P. Fox, III
Chair

Dated: May 20, 1996

APPENDIX G

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 95-BG-1830

FILED
May 23, 1996
COURT OF APPEALS

In the Matter of
CORNELL D. CORNISH, ESQUIRE
A Member of the Bar of the
District of Columbia
Court of Appeals

BDN: 507-95

BEFORE: Ferren and King, Associate Judges; and Kern, Senior Judge.

O R D E R

On consideration of respondent's request for reconsideration of this Court's order of April 15, 1996, and for other relief, and the opposition thereto, it is

ORDERED that respondent's request for reconsideration and for other relief is denied.

PER CURIAM

Copies to:

Cornell D. Cornish, Esquire
1101 New Hampshire Avenue, N.W.
Suite 301
Washington, D.C. 20037

Hamilton P. Fox, Esquire
Chair
Board on Professional Responsibility

Leonard H. Becker, Esquire
Bar Counsel
Office of Bar Counsel

emb

APPENDIX K

Notice: This opinion is subject to formal revision before publication in the Atlantic and Maryland Reporters. Users are requested to notify the Clerk of the Court of any formal errors so that corrections may be made before the bound volumes go to press.

District of Columbia Court of Appeals

No. 95-BG-1830

IN RE CORNELL D.M. JUDGE CORNISH,

RESPONDENT.

A Member of the Bar of the
District of Columbia Court of Appeals

On Report and Recommendation of the
Board on Professional Responsibility

(Argued February 25, 1997 Decided March 27, 1997)

Cornell D.M. Judge Cornish, pro se.

Michael S. Frisch, Senior Assistant Bar Counsel, with whom *Leonard H. Becker*, Bar Counsel, was on the brief, for petitioner, the Office of Bar Counsel.

Before FERREN, STEADMAN and SCHWELB, *Associate Judges*.

PER CURIAM: On December 4, 1995, the Court of Appeals of Maryland ordered that respondent[1] be placed on inactive status from the practice of law. *Attorney Griev. Comm'n v. Cornish*, 667 A.2d 916 (Md. 1995). The Maryland court acted in response to a petition filed jointly by the Attorney Grievance Commission and the respondent. The petition stated, *inter*

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1 All prior proceedings both in Maryland and here have identified respondent as Cornell D. Cornish. Respondent has submitted to us an order of the Superior Court filed September 13, 1990, formally granting respondent's petition to change his name from Cornell D. Cornish to Cornell D.M. Judge Cornish. Without objection by Bar Counsel, we have changed the formal caption of this case accordingly. In light of this opinion, all other pending motions, both pre-argument or post-argument, are dismissed as moot.

alia, that at the time, "a complaint was pending against Respondent concerning the handling of a patent application"[2] and that "Respondent admits that at the present time he is unable and has no desire to cope with the demands of the practice of law."

On April 15, 1996, pursuant to D.C. Bar R. XI, § 11(d), this court temporarily suspended respondent from the practice of law in the District of Columbia pending a recommendation from the Board on Professional Responsibility. We now have before us the recommendation of the Board that this court impose reciprocal discipline of indefinite suspension with reinstatement conditioned upon a showing of fitness, pursuant to D.C. Bar R. XI, § 13(g).

We have consistently taken this course of action in reciprocal proceedings involving the imposition of inactive status by court order in Maryland pursuant to a joint petition as in this case. *In re Dick*, 683 A.2d 159 (D.C. 1996); *In re Clancy*, 675 A.2d 493 (D.C. 1996); *In re O'Brien*, 665 A.2d 662 (D.C. 1995); *In re Samuels*, 648 A.2d 943 (D.C. 1994).

It is true that in *In re Samuels*, the order placing that attorney on inactive status contained an explicit provision conditioning reinstatement upon a showing "that he has been restored to good health and is capable of engaging in the competent practice of law." *Attorney Griev. Comm'n v. Samuels*, 616 A.2d 903 (Md. 1992). The Maryland order before us placing respondent on inactive status does not include any such explicit condition, *Attorney Griev. Comm'n v. Cornish*, 667 A.2d 916 (Md. 1995). We note, however, that the orders involved in *Attorney Griev. Comm'n v. Dick*, 664 A.2d 1263 (Md. 1995), *Attorney Griev. Comm'n v. Clancy*, 649 A.2d 356 (Md. 1994), and *Attorney Griev. Comm'n v. O'Brien*, 632 A.2d 767 (Md. 1993), each of which formed the basis for the reciprocal action here, contained no explicit conditions upon rein-

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[2] The petition further stated that "Respondent has taken steps to resolve that matter."

statement. In all of those cases, as in respondent's, the Maryland Court of Appeals simply ordered inactive status in accordance with Maryland Rule 16-713 (then BV13). It appears that under Maryland Rule 16-714, such an order may be modified or terminated only by a petition filed in the Court of Appeals which must "set forth facts showing that the petitioner is rehabilitated and is otherwise entitled to the relief sought."

Accordingly, in each of our cases cited above, we provided that reinstatement should be governed by the terms of D.C. Bar R. XI, § 13(g). Consistent with these precedents, the Board has recommended that respondent's reinstatement in the District of Columbia be likewise governed by the terms of D.C. Bar R. XI, § 13(g). Under that subsection, an attorney suspended for disability may apply for reinstatement "once a year or at such shorter intervals as the Court may direct in its order of suspension or any modification thereof." The Board recommended that the one-year period run from the date respondent filed an affidavit pursuant to D.C. Bar R. XI, § 14(g).

We were advised by Bar Counsel at oral argument that respondent had filed such an affidavit on July 29, 1996. With respect to the time within which respondent may apply for reinstatement, we note that the Maryland rules appear to impose no minimum period within which reinstatement may be sought by one placed on inactive status by court order. We were advised at oral argument that respondent may soon seek reinstatement in Maryland. Should such reinstatement occur prior to the expiration of the one-year period here, respondent may move for a modification of the time period for reinstatement here as provided in § 13(g).[3]

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[3] Although our rules are not entirely clear, in our prior orders cited above dealing with the effect here of Maryland inactive status impositions, we appear to have interpreted § 13(g) as making an attorney eligible for reinstatement only after a year has passed, absent court order shortening that interval, and to measure that

(Footnote continued on next page.)

Accordingly, it is ORDERED that respondent is hereby suspended indefinitely from the practice of law in the District of Columbia *nunc pro tunc* to July 29, 1996. Reinstatement shall be governed by the terms of D.C. Bar R. XI, § 13(g).

A true Copy
Test:
Garland Pinkston, Jr.
Clerk of the District of Columbia Court
of Appeals
BY _____ DEPUTY CLERK

---

3 (Continued)

period dependent upon the filing of the affidavit required by § 14(g). We follow that practice here without further examination of the issues, since as indicated reinstatement here will presumably be dependent in the first instance upon action in Maryland and the time period here could be correspondingly shortened in that eventuality. Although following the entry of the Maryland order respondent filed an affidavit pursuant to *Matter of Goldberg*, 460 A.2d 982 (D.C. 1983), following his subsequent suspension here he did not timely file a § 14(g) affidavit, a precondition to *Goldberg* retroactivity. See § 16(c); *In re Slosberg*, 650 A.2d 1329 (D.C. 1994).

APPENDIX L

DISTRICT OF COLUMBIA COURT OF APPEALS

Filed May 6, 1997

No. 95-BG-1830

IN RE: CORNELL D.M. JUDGE CORNISH,
Respondent.
BDN: 507-95

BEFORE: Ferren, Steadman and Schwelb, Associate Judges.

O R D E R

On consideration of respondent's request to reconsider and vacate the order of March 27, 1997, construed as a petition for rehearing, it is

ORDERED that the petition for rehearing is denied.

PER CURIAM

Copies to:

Cornell D.M. Judge Cornish
1101 New Hampshire Avenue, N.W.
Suite 301
Washington, D.C. 20037

Karen K. Christensen, Esquire
Chair
Board on Professional Responsibility
515 Fifth Street, N.W. Room 101
Washington, D.C. 20001

Leonard H. Becker, Esquire
Bar Counsel
Office of Bar Counsel
515 Fifth Street, N.W., Room 127
Washington, D.C. 20001

APPENDIX Z1

UNITED STATES TAX COURT
WASHINGTON, DC 20217

In re: Cornell Daniel Cornish

ORDER TO SHOW CAUSE

This court having received information that on December 4, 1995, you were placed on inactive status by consent and your name was stricken from the roll of attorneys by Order of the Court of Appeals of Maryland, it is

ORDERED: That on or before April 2, 1996, you show cause, if any there be, in writing, why you should not be suspended or disbarred from practice before this Court or otherwise further disciplined. It is further

ORDERED: That a hearing concerning your proposed discipline is scheduled at the United States Tax Court, 400 Second Street, N.W., Washington, DC. 20217 on April 16, 1996 at 10:00 a.m., at which time you may further show cause, if any, why you should not be suspended, disbarred or otherwise disciplined. If you wish to appear at said hearing, in person or by counsel, a notice in writing, advising the Court of your intention to appear, shall be submitted on or before April 2, 1996. If no such notice is submitted, your right to appear at the hearing shall be deemed waived.

You are at liberty to submit your written resignation from the bar of the United States Tax Court on or before April 2, 1996. It is further

ORDERED: That in the event you fail to submit your resignation or to show cause why you should not be suspended or disbarred or further disciplined, or in the absence of a request for hearing on or before April 2, 1996,

this Committe will take such further action as it deems appropriate in the premises.

(Signed) John O. Colvin
John O. Colvin, Judge
Chairman, Committee on
Admission, Ethics and
Discipline

Dated: January 17, 1995
Washington, D.C.

APPENDIX Z2

UNITED STATES TAX COURT
WASHINGTON, DC 20127

In re: Cornell Daniel Cornish

ORDER

Upon due consideration of his appearance before the Committee on Admission, Ethics and Discipline on April 16, 1996, it is

ORDERED: That the Order to Show Cause to Cornell Daniel Cornish dated January 17, 1996 is hereby discharged.

(Signed John O. Colvin

John O. Colvin, Judge
Committee on Admissions,
Ethics and Discipline

Dated: July 26, 1996
Washington, D.C.

APPENDIX Z3

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CLERK OF THE COURT March 20. 1996

Cornell D.M. Judge Cornish
Suite 301
1101 New Hampshire Avenue, N.W.
Washington, D.C. 20037

Dear Mr. Cornish:

Receipt is hereby acknowledged of the Order for Change of Name filed in the Superior Court of the District of Columbia dated September 13, 1990. Accordingly, your records on file in the Admissions Office of the United States Tax Court have been updated to reflect this change as listed above.

Very truly yours,

/s/ Christiana O. Ayres
Christiana O. Ayres
Admissions Clerk

APPENDIX Z4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Filed April 11, 1996

In the Matter of	
Cornell D.M. Judge Cornish Suite 301 1101 New Hampshire Ave., NW Washington, D.C. 20037	M-2-238 ORDER
Respondent	

Pursuant to General Rule 4(e) of this Court, on February 21, 1996, an Order to Show Cause was served on respondent, Cornell D. Cornish, directing him to show cause by March 22, 1996 why he should not be disciplined by this court pursuant to General Rule 4(g).

This Court has received a submission from respondent in which he advises this Court that he has changed his name from Cornell D. Cornish to Cornell D.M. Judge Cornish. This Order reflects respondent's name change. Further, respondent acknowledges that he has ceased practice in this Court until he is reinstated in the State of Maryland.

Rule 4(g) provides that discipine imposed pursuant to Rule 4(e) may consist of suspension, censure, or in the case of an attorney who is a member of the bar of this Court, it may consist of striking the name of the attorney from the roll.

Therefore, it is hereby directed that respondent Cornell D.M. Judge Cornish be suspended in this court until such time as he is reinstated to practice in the State of Maryland.

SO ORDERED.

ROBERT P. PATTERSON, JR.
Chairman, Grievance Committee S.D.N.Y.

Dated: New York, New York
April 3, 1996

MAILED ON 4/3/96

CIRCUIT COURT
ANNE ARUNDEL COUNTY
Robert P. Duckworth
Church Circle
P.O. Box 71
Annapolis, MD 21404-0000

CASE NO: C-93-08729.OL
OLD CASE #:
CASE TYPE: CIVIL

CRAIG BOLTON vs. STATE OF MARYLAND, et al.

NOTIFICATION TO PARTIES OF
CONTEMPLATED DISMISSAL

Pursuant to Maryland Rule 2-507 this proceeding will be "DISMISSED FOR LACK OF JURISDICTION OR PROSECUTION WITHOUT PREJUDICE", 30 days after service of this notice, unless prior to that time a written motion showing good cause to defer the entry of an order of dismissal is filed.

Costs will be assessed in accordance with Maryland Rules.

Direct all inquiries to:_____

_____
Robert P. Duckworth
Clerk of the Circuit Court

Notices mailed to:
CORNELL D.M. JUDGE CORNISH
SUITE 301
1101 NEW HAMPSHIRE AVE NW
WASHINGTON DC 20037
PHONE: (202) 429-9705
Date issued: 9/30/96
Date Mailed: _____

APPENDIX B

IN THE COURT OF APPEALS OF MARYLAND
Misc.Docket (Subtitle BV)
No. ___
September Term, 1995

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND
100 Community Place
Suite 3301
Crownsville, Maryland 21032

Petitioner

v.

CORNELL D. CORNISH
1101 New Hampshire Avenue, N.W., Suite 301
Washington, D.C. 20037

CONSENT TO INACTIVE STATUS

Comes now the Petitioner, the Attorney Grievance Commission of Maryland, and the Respondent, Cornell D. Cornish, and jointly petition this Court to permit the Respondent to be placed on inactive status.

1. Respondent was admitted to the Maryland bar on November 9, 1956.

2. A complaint is pending against Respondent concerning the handling of a patent application and Respondent has taken steps to resolve that matter.

3. During the course of our investigation Respondent has advised that he does not actively engage in practice, occasionally take some "pro bono" work, but that he suffers lasting affects from open heart surgery in 1982 and he goes to

rehabilitation every day and, rests for some time thereafter. In addition he participates in Al Anon attending three (3) or for (4) meetings a week as well as meeting with a sponsor.

4. Respondent is 66 years of age and currently draws Social Security and a pension from his employment with the federal government.

5. Respondent admits that at the present time he is unable and has no desire to cope with the demands of the practice of law and agrees that it is in his best interest to be placed on inactive status.

WHEREFORE, Petitioner and Respondent pray:

A. That Respondent be placed on inactive status by this Court.

B. This Court that such other and further relief as to the Court shall seem just and proper in this cause.

	illegible
Cornell D. Cornish, Esq. 1101 New Hampshire Ave., N.W., Suite 301 Washington, D.C. 20037	Melvin Hirshman Bar Counsel Attorney Grievance Commission of Maryland 100 Community Place Suite 3301 Crownsville, Maryland 21032

Date

APPENDIX M

District of Columbia Court of Appeals Rule XI Governing the Bar, Sec. 13:

INCOMPETENT AND INCAPACITATED ATTORNEYS

(a) MENTALLY DISABLED ATTORNEYS

When an attorney has been judicially declared to be mentally incompetent or has been involuntarily committed to a mental hospital as an inpatient, the Court upon proper proof of that fact, shall enter an order suspending that attorney from the practice of law for an indefinite period until further order of the Court. The suspension shall be effective immediately. A copy of the order shall be served upon the attorney, the attorney's guardian, and the director of the mental hospital, if any, in such manner as the Court may direct. If at any time thereafter the attorney is judicially declared to be competent or discharged from inpatient status in the mental hospital, the Court may dispense with further evidence that the disability has ended and may direct the attorney's reinstatement to the practice of law upon such terms as it deems appropriate.

(b) APPLICATION FOR MEDICAL EXAMINATION

If, at any time prior to its final disposition of a disciplinary proceeding, the Board has good cause to believe that the mental or physical condition of the attorney is relevant to the subject matter of the complaint and is a factor which should be considered in the pending proceeding, the Board shall direct Bar Counsel to apply to the Court for an order requiring the attorney to submit the an appropriate examination. The application shall be by petition, with notice to the attorney, and shall be accompanied by a statement from Bar Consel setting forth in detail reasons for the application and the relevance of the examination to the pending proceeding.

(c) ATTORNEYS WHO MAY BE INCAPACITATED

If the Board has reason to believe that an attorney is incapacitated from continuing to practice law because of mental infirmity or illness or because of addiction to drugs or intoxicants, the Board may petition the Court to determine whether the attorney is so incapacitated. Upon the fiing of the Board's petition, the court may take or direct such action as it deems appropriate, including the examination of the attorney by such qualified medical expert or experts as it shall designate. If the Court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order suspending the attorney on the ground of such disability for an indefinite period, effective immediately and until further order of the Court, and any pending disciplinary proceeding against the attorney shall be held in abeyance. In a case of addiction to drugs or intoxicants, the Court alternately may consider the possibility of probationary conditions. The Court may provide for such notice to the attorney of proceedings in the matter as it deems appropriate and may appoint counsel to represent the attorney if it determines that the attorney is without adequate representation.

(d) BURDEN OF PROOF

In a proceeding under this section seeking an order of suspension, the burden of proof shall be upon the Board. In a proceeding under this section an order terminating a suspension, the burden of proof shall be upon the suspended attorney.

(e) CLAIM OF DISABILITY BY ATTORNEY

If, in the course of a disciplinary proceeding, the attorney claims to be suffering from a disability because of mental or physical illness or infirmity, or because of addi-

tion to drugs or intoxicants, which makes it impossible for the attorney to present an adequate defense, the Court shall enter an order immediately suspending the attorney from the practice of law until determination is made of the attorney's capacity to practice law in a proceeding under subsection (c) of this section.

(f) ACTION BY THE COURT WHEN ATTORNEY IS NOT INCAPACITATED

If, in the course of a proceeding under this section or a disciplinary proceeding, the Court determines that the attorney is not incapacitated from practicing law, it shall take such action as it deems appropriate, including the entry of an order directing the resumption of the disciplinary proceeding against the attorney.

(g) REINSTATEMENT OF INCAPACITATED ATTORNEY

An attorney suspended under this section may apply for reinstatment once a year, or at such shorter intervals as the Court may direct in its order of suspension or any modification thereof. Upon the filing of such application, the Court may take or direct such action as it deems appropriate, including the examination of the attorney by such qualified medical experts as the Court shall designate. In its discretion, the Court may direct that the expense of such an examination shall be paid by the attorney, and that evidence be presented establishing proof of the attorney's competence and learning in the law, which may include certification by the bar examiners of the attorney's successful completion of an examination for admission to practice. An application for reinstatement under this subsection shall be granted by the Court upon a showing by the attorney, by clear and convincing evidence, that the disability has ended and that the attorney is fit to resume the practice of law.

(h) WAIVER OF DOCTOR-PATIENT PRIVILEGE

The filing of an application for reinstatement under subsection (g) of this section shall constitute a waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of disability. The attorney shall disclose the name and address of every physician by whom, and every hospital in which, the attorney has been examined or treated since the suspension and shall furnish to the Court written consent to each to divulge such information ad records as may be required by Court-appointed mediccal experts.

APPENDIX C

THE GEORGE WASHINGTON UNIVERSITY
WASHINGTON DC

MEDICAL CENTER
Department of Medicine
February 12, 1996

TO WHOM IT MAY CONCERN

The attached exercise test of Judge Cornell Cornish demonstrates a superior level of physical fitness, which places him in the top 5 percentile for his age group, attributable to longterm adherence to his maintenance exercise program.

There were no exercise-induced symptoms or ECG changes indicative of angina: and Cardiovascular prognosis is excellent.

Sincerely,
/s/ illegible
Patrick Gorman M.D.
Director, Cardiac
Rehabilitation

Exercise Stress Test Report

Date:02/06/96

Patient: Cornish, Cornell D.M. Judge
Date of Birth: 05/04/29
Diagnosis: CAD Physician: Patrick A. Gorman, M.D. #
Med Record #:0986843 Location: Account #: 71210793

Test Performed: Exercise-Bruce protocol

Conclusion

1. Above average exercise capacity.
2. Normal heart rate response to exercise.
3. Normal blood pressure response to exercise.
4. No chest pain at peak exercise.
5. Arrhythmias: None
6. ST changes: No ST changes with exercise.

A. Lopez, M.D. unconfirmed

Previous Test: None.

Medications: ASA

Pre-Exercise ECG Interpretation: Normal sinus rhythm, Incomplete right bundle branch block

Procedure:

(1) The attached Exercise Test Data Sheet shows the protocol used.

(2) Observations made at end of each minute of exercise/recovery.

WORKLOAD

Peak Exercise: 13.5 METs 5 mph 18 %grade

DURATION OF FINAL STAGE:

Exercise Time: 13 min. sec.

Reason for Termination of Exercise: Fatigue

	Resting	Peak Exercise	Max. Predicted
HEART RATE:	72	135	154
BLOOD PRESSURE:	128/90	170/80	

Exercise Induced Symptoms/Signs: No chest pain

ST Changes:

Arrhythmias: None

THE GEORGE WASHINGTON UNIVERSITY MEDICAL CENTER
Cardiac Non-Invasive Laboratory
901 23rd St., NW, #2440N, Washington, D.C. 20037
(202) 994-3909 FAX (202) 994-illegible

APPENDIX D

COURT OF APPEALS
THE DISTRICT OF COLUMBIA

No.

In The Matter of
Cornell D. Cornish, Esquire
Respondent
A Member of the Bar of the District of Columbia

AFFIDAVIT

The undersigned, Julia Frank, M.D., declares and swears as follows:

1. I am a licensed physician in the District of Columbia and that I practice as a medical doctor in the Department of Psychiatry and Behavioral Sciences of The George Washington Medical Center, 2150 Pennsylvania Avenue, N.W., Washington, D.C. 20037 (202) 994-1733;

2. On February 14 and 27, 1996, I interviewed Cornell D.M. Judge Cornish, whose address is Suite 301, 1101 New Hampshire Ave., N.W., Washington, D.C. 20037,

3. I have reviewed the records of a stress test administered on 2/6/9C to said Cornell D.M. Judge Cornish, as well as records of blood tests administered to him in 1994 and 1995 in connection with his rehabilitation from heart disease;

4. The records reviewed by me show evidence only of a mild cardiac defect which should have no bearing on his ability to practice law;

5. I see no current symptoms of alcohol or drug abuse.

Further, deponent saith not.

/s/ Julia Frank, md

Julia Frank, M.D.
The George Washington
University Medical Center
2150 Pennsylvania Ave.
Washington, D.C. (NW)
(202) 994-1733

Date:
District of Columbia)

) ss:
City of Washington)

Sworn to and subscribed before me this 8th day of March, 1996.

Kimberly F. illegible

Notary Public
My Commission expires
March 16, 2000

APPENDIX N

STATUTES AND RULES

District of Columbia Court of Appeals Rule XI Governing the Bar, Sec. 11:

RECIPROCAL DISCIPLINE

(c) STANDARDS FOR RECIPROCAL DISCIPLINE

Reciprocal discipline shall be imposed unless the attorney demonstrates, by clear and convincing evidence, that:

(1) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistently with its duty, accept as final the conclusion on that subject; or

(3) The imposition of the same discipline by the Court would result in grave injustice; or

(4) The misconduct established warrants substantially different discipline in the District of Columbia; or

(5) The misconduct elsewhere does not misconduct in the District of Columbia.

Unless there is a finding by the Board under (1), (2), or (5) above that is accepted by the Court, a final determinaton by a disciplining court outside the District of Columbia or by another court in the District of Columbia that an attorney has been guilty of professional misconduct shall conclusively establish the misconduct for the purpose of a reciprocal disciplinary proceeding in this court.

APPENDIX KO

RULE XI,Sec. 11 September 1, 1989

DISTRICT OF COLUMBIA COURT OF APPEALS
RULES OF PROFESSIONAL CONDUCT

Section 11 - RECIPROCAL DISCIPLINE.

* * *

(d) TEMPORARY SUSPENSION AND SHOW CAUSE ORDER.

Upon receipt of a certified copy of an order demonstrating that an attorney subject to the disciplinary jurisdiction of this Court has been suspended or disbarred by a disciplining court outside the District of Columbia or by another court in the District of Columbia, the Court shall forthwith enter an order suspending the attorney from the practice of law in the District of Columbia pending final disposition of any reciprocal disciplinary proceeding, and directing the attorney to show cause within thirty days from the date of the order why the identical discipline should not be imposed. The attorney's response to the order to show cause shall be filed with the Board, which for good cause shown may extend the time for filing a response for a period not to exceed thirty days.

* * *

APPENDIX A

FILED
SEP 13 1990
Superior Court
of the District of Columbia
Washington, DC

Superior Court of the District of Columbia
Civil Division

ORDER FOR CHANGE OF NAME

IN RE: Cornell D. Cornish

C.A. No. 90-CA-08850

COMPLETE NAME OF APPLICANT: Cornell D. Cornish

Upon consideration of the application for the change of name filed herein and no objections having been made and proof of publication having been made and filed herein, and all other requirements appear having been met, it is this 13th day of September, 1990,

ORDERED BY THE COURT that the said application be and hereby is granted, and it is further,

ORDERED BY THE COURT that henceforth and hereafter Cornell D. Cornish be known as Cornell Daniel Michael Judge Cornish

/s/ illegible

JUDGE

JULY 11, 1991
illegible

APPENDIX L

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of	)	
	)	
CORNELL D. CORNISH,	)	Docket No. 507-95
	)	
Respondent,	)	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

Respondent, a member of the District of Columbia and State of Maryland Bars, was placed on inactive status by consent in Maryland by Order of the Court of Appeals of Maryland dated December 5, 1995. The Maryland Order was based on a Consent to Inactive Status filed by Maryland Bar Counsel and Respondent. On April 15, 1996, the District of Columbia Court of Appeals entered an Order suspending Respondent from practice in this jurisdiction and ordering the Board on Professional Responsibility to recommend to the Court whether reciprocal discipline should be imposed, or whether the Board elects to proceed *de novo* pursuant to Rule XI, section 11.[1] For the reasons stated below, the Board recommends that the Court impose reciprocal discipline of indefinite suspension with reinstatement conditioned upon a showing of fitness, pursuant to D.C. Bar Rule XI, section 13(e).

The Consent to Inactive Status relates that Respondent was the subject of a Maryland complaint concerning Respondent's handling of a patent application, and that Respondent had taken

[1] The Court's April 15, 1996 Order also referred to the Board Respondent's motion for appointment of counsel. On May 20, 1996, the motion was denied without prejudice to reconsideration should Respondent file the affidavit and tax return required by the Board to support appointment of counsel at the Board's expense. Respondent has made no further filings.

steps to resolve that matter. Respondent advised Maryland Bar Counsel during the couse of the investigation that he does not actively engage in practice, but occasionally engages in some *pro bono* work. Respondent is retired from employment with the federal government. The Consent to Inactive Status states that Respondent "suffers from lasting [e]ffects from open heart surgery in 1982 and . . . goes to rehabilitation every day and rests for some time thereafter. In addition he participates in Al Anon attending three (3) or four (4) meetings a week as well as meeting with a sponsor." In the Consent to Inactive Status, "Respondent admits that at the present time he is unable and has no desire to cope with the demands of the practice of law and agrees that it is in his best interest to be placed on inactive status." Respondent and Maryland Bar Counsel agreed that Respondent should be placed on inactive status. The Court of Appeals of Maryland so ordered, with no time limit for reapplication to practice. Under the Maryland Bar Rules, Respondent has the burden of reapplying and showing his fitness by clear and convincing evidence. Maryland Rules of Procedure, Chapter 1100, BV14.d.4.

The Court has treated other cases in which respondents took inactive status in Maryland due to disability while a disciplinary matter was pending as warranting reciprocal discipline. *In re Clancy,* No.94-BG-1549, *et al.* (D.C. May 9, 1996); *In re O'Brien,* 665 A.2d 662 (D.C. 1995); *In re Samuels,* 648 A.2d 943 (D.C. 1994). In those cases,the functionally identical discipline — indefinite voluntary suspension with reinstatement conditioned upon a showing of fitness — has been imposed pursuant to D.C. Bar Rule XI, section 13(e) (suspension upon a claim of disability by attorney). Bar Counsel recommends the same result in this matter, and Respondent has not made any filing before the Board to demonstrate that any exception to the imposition of reciprocal discipline should apply. D.C. Bar Rule XI, section 11(c).

The Board accordingly recommends that reciprocal discipline of an indefinite suspension be imposed in the District of Columbia, with reinstatement to be governed by the terms of D.C. Bar Rule XI, section 13(g) (attorney eligible for reinstatement after one year upon a showing, by clear and convincing evidence, that the disability has ended and the attorney is fit to practice law). The Board recommends that the one-year period run from the date Respondent files an affidavit pursuant to Rule XI, section 14(g).

BOARD ON PROFESSIONAL RESPONSIBLITY

By: /s/ Patricia A. Brannan
Patricia A. Brannan

Dated: July 12, 1996

All members of the Board concur in this Report and Recommendation.

APPENDIX Q

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 202543

October 7, 1996

Mr. Cornell D. Cornish
Suite 301
1101 New Hampshire Avenue, NW
Washington, DC 20037

Re: Cornell D. Cornish
v. District of Columbia Board on Professional Responsibility
No. 96-161

Dear Mr. Cornish:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

/s/ William K. Suter

William K. Suter, Clerk

APPENDIX R

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

December 2, 1996

Mr. Cornell D. Cornish
Suite 301
1101 New Hampshire Avenue, NW
Washington, DC 20037

Re: Cornell D. Cornish
v. District of Columbia Board on Professional Responsiblity
No. 96-161

Dear Mr. Cornish:

The Court today entered the following order in the above entitled case:

The petition for rehearing is denied.

Sincerely,

William K. Suter, Clerk

APPENDIX AA

Court of Appeals of Maryland
Courts of Appeal Building
Annapolis, MD. 21401-1699

Alexander L. Cummings
Clerk

ROBERT C. FRANKE
CHIEF DEPUTY
MARY J. JONES
BESIE M. DECKER
JACQUELINE L. HUGHES
DEPUTIES

974-3341
WASHINGTON AREA 261-2999

July 9, 1991

Cornell D.M. Judge Cornish, Esquire
Attorney at Law
1101 New Hampshire Avenue, N.W., Suite 301
Washington, D.C. 20037

Re: Name Change

Dear Mr. Cornish:

Receipt is acknowledged of your letter of July 4, together with a true test copy of your change of name. We have this date changed your name on our records from C. Daniel Cornish to that shown above and are notifying the Clients' Security Trust Fund to do the same. Your decree must be kept on file by this office.

Very truly yours,

/s/ Alexander L. Cummings

Clerk

ALC/mjj
cc: Clients' Security Trust Fund
Maryland State Bar Association

Supreme Court, U.S.
FILED
AUG 29 1997
CLERK

(2)

No. 97-198

IN THE

Supreme Court of the United States

October Term, 1997

CORNELL D.M. JUDGE CORNISH,

Petitioner,

VS.

DISTRICT OF COLUMBIA COURT OF APPEALS, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

BRIEF FOR DISTRICT OF COLUMBIA COURT OF APPEALS AND DISTRICT OF COLUMBIA BOARD ON PROFESSIONAL RESPONSIBILITY IN OPPOSITION

*Leonard H. Becker
Bar Counsel

Michael S. Frisch
Senior Assistant Bar Counsel

Office of Bar Counsel
515-5th St., N.W., Room 127
Washington, D.C. 20001
(202) 638-1501

**Counsel of Record for Respondents District of Columbia Court of Appeals and District of Columbia Board on Professional Responsibility*

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QUESTION PRESENTED

Whether the District of Columbia Court of Appeals correctly imposed the reciprocal discipline of a disability suspension upon Petitioner, based upon an order of the Maryland Court of Appeals directing his placement on inactive status in the Maryland Bar on the ground of a medical disability.

TABLE OF CONTENTS

Page

OPINION BELOW 1

JURISDICTION 1

STATUTES AND RULES 2

STATEMENT OF PROCEEDINGS BELOW 2

ARGUMENT 3

CONCLUSION 6

TABLE OF AUTHORITIES

Cases:

Page

In re Chisholm, No. 94-BG-818 (D.C. Mar. 1995) 5

In re Gardner, 650 A.2d 693 (D.C. 1994) 4

Gilbert v. Homar, ___U.S.___ (U.S. June 9,1997) (No. 96-651) 5

In re O'Brien, 665 A.2d 662 (D.C. 1995) (per curiam)..... 4

In re Samuels, 648 A.2d 943 (D.C. 1994) (per curiam)..... 4

In re Velasquez, 507 A.2d 145 (D.C. 1986) (per curiam) 4

In re Webster, 661 A.2d 144 (D.C. 1995) 3

In re Zilberberg, 612 A.2d 832 (D.C. 1992) 4

Statutes and Rules:

D.C. App. R. XI, § 11.....*passim*

D.C. App. R. XI, § 13 .....*passim*

D.C. App. R. XI, § 14..... 3

Md. Rule BV 13 3

Md. Rule BV 14 3

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OPINION BELOW

The judgment of the District of Columbia Court of Appeals, directing Petitioner's disability suspension with leave to seek reinstatement (Pet. App. 11a), is reported at 691 A.2d 156.

JURISDICTION

The judgment of the court of appeals for which review is sought was entered March 27, 1997. Petitioner filed a motion for reconsideration, which the court denied by order entered May 6, 1997 (Pet. App. 15a). Petitioner filed his petition for a writ of certiorari on or about August 1, 1997. Jurisdiction is asserted under various provisions of Title 28 of the United States Code.

STATUTES and RULES

The pertinent statute conferring jurisdiction on the court of appeals to discipline members of its Bar and relevant rules of procedure prescribed by the court of appeals are set out in an Appendix to this brief.

STATEMENT OF PROCEEDINGS BELOW

Petitioner is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on motion on November 4, 1982. He also is a member of the Bar of Maryland. On December 4, 1995, he was placed on inactive status on consent by order of the Court of Appeals of Maryland (the "Maryland Court"). *Attorney Grievance Commission v. Cornish*, Miscellaneous Docket (Subtitle BV) No. 39 (Sept. Term, 1995) (Pet. App.1a).[1]

The order placing Petitioner on inactive status was reported to the District of Columbia Court of Appeals. On April 15, 1996, the court entered an order suspending Petitioner pursuant to D.C. App. R. XI, § 11(d) (Pet. App. 5a). The court directed the Board on Professional Responsibility (the "Board") to recommend promptly whether reciprocal discipline should be imposed or whether the Board, instead, elected to proceed *de novo*. The court also denied Petitioner's motions to amend the order to reflect his change of name and to permit him to remove his name voluntarily from the register of attorneys admitted to practice in the District of Columbia.[2]

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[1] Throughout the proceedings below, Petitioner is referred to as the "Respondent."

[2] Petitioner unsuccessfully challenged the court of appeals' order of interim suspension by petition for writ of certiorari, which this Court de-

On July 12, 1996, the Board filed its report, recommending that the court of appeals impose reciprocal discipline of an indefinite disability suspension, with reinstatement conditioned upon a showing of fitness pursuant to D.C. App. R. XI, § 13(e) (Pet. App. 37a).[3] On March 27, 1997, the court entered its judgment, adopting the Board's report and recommendation.[4]

ARGUMENT

1. The judgment of the court of appeals plainly is correct and does not warrant this Court's review. The record in Maryland demonstrated that Petitioner was the subject of a complaint concerning the handling of a patent application. Petitioner admitted that he suffered lasting effects from surgery and participated in Al Anon. He further admitted that he was unable to cope with the demands of law practice and had no wish to do so. Maryland Bar Counsel and Petitioner agreed that Petitioner should be placed on inactive status (Pet. App. 23a).

Under D.C. App. R. XI, § 11(b), the Maryland Court of Appeals is deemed a disciplining court, with authority to suspend or disbar attorneys admitted to its bar. *In re Webster*, 661 A.2d 144 (D.C. 1995). *See* D.C. App. R. XI, §11(a). The Maryland rules equate orders of suspension and disbarment with orders placing attorneys on inactive status. Md. Rule BV 13a1. In either event, the Clerk of the Maryland Court "shall strike the name of the attorney from the register. . . ." The burden is on Petitioner to terminate his inactive status. Rule BV 14. Thus, the

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nied on October 7, 1996. *Cornish v. District of Columbia Court of Appeals*, No. 96-161.

[3] The text of Section 13 is reprinted at Pet. App. 25a.

[4] Under the terms of the court's order, Petitioner has been eligible to apply for reinstatement in the District of Columbia since July 29, 1997, one year from the date on which he filed an affidavit complying with the provisions of D.C. App. R. XI, § 14. As of the date of filing of this brief in opposition, Petitioner has not filed a petition seeking such reinstatement.

Maryland order constitutes discipline for purposes of D.C. App. R. XI. *In re O'Brien*, 665 A.2d 662 (D.C. 1995) (per curiam); *In re Samuels*, 648 A.2d 943 (D.C. 1994) (per curiam).

Reciprocal *(i.e.,* identical) discipline is imposed in the District of Columbia unless the attorney demonstrates, by clear and convincing evidence, that one or more of the exceptions enumerated in Rule XI applies. D.C. App. R. XI, § 11(c). Here, Maryland followed a procedure similar to that prescribed in D.C. App. R. XI, §§ 13(b) & (c). While under investigation for misconduct, Petitioner sought and was granted inactive status. The Maryland Court concluded that Petitioner's health problems mandated inactive status.

In an original case arising under D.C. App. R. XI, § 13, a disability suspension would be appropriate on this record. *See In re Samuels, supra.* With due deference to Maryland's determination to place Petitioner on inactive status for health reasons, reciprocal discipline is appropriate. *In re Gardner*, 650 A.2d 693 (D.C. 1994); *In re Zilberberg*, 612 A.2d 832 (D.C. 1992); *In re Velasquez*, 507 A.2d 145 (D.C. 1986) (per curiam) (articulating standard of deference to foreign jurisdiction's factual findings in reciprocal discipline matters).

2. Petitioner's principal complaint appears to be that the court below somehow has seized his "famous common law mark," to wit, his name as formally amended to include "Judge" (Pet. 6-8). The court recognized the formal proceeding that had eventuated in Petitioner's change of name and amended the formal caption of the disciplinary proceeding to give full effect to the change. 691 A.2d at 157 n.1 (Pet. App. 11a). The court's order constrains Petitioner in the use of his name as an incidental effect of his disability suspension from the practice of law in the District of Columbia, but that constraint, without more, does not present any viable federal constitutional or statutory issue warranting this Court's review.

3. Petitioner also appears to complain of the Maryland Court's order, maintaining that he rejected the joint petition tendered by the Maryland Attorney Grievance Commission, upon which the Maryland Court rested its determination of inactive status (Pet. 10). Whatever right Petitioner might once have had to seek this Court's review of the Maryland Court's order, he may not properly mount a collateral attack upon that order by challenging the District of Columbia court's judgment. In any event, as we understand the Maryland Court's order, Petitioner is free to seek reinstatement to active membership before the Maryland Court at any time. If he obtains a vacatur of the Maryland Court's order of suspension, he may apply for removal of his disability suspension in the District of Columbia. *See In re Chisholm*, No. 94-BG-818 (D.C. Mar. 7, 1995). Even if, as Petitioner maintains (Pet. 13), the Maryland Court's order placing him on inactive status arose in a contested rather than an uncontested proceeding, as the court below assumed, the distinction, without more, would not demonstrate that the court erred in imposing functionally identical discipline or that its judgment violates Petitioner's fundamental rights.

4. Petitioner's contention that he was denied a timely post-suspension hearing in the District of Columbia is without merit (Pet. 14). The order of the court of appeals placing Petitioner upon interim suspension following notice of the Maryland Court's action directed Petitioner to show cause before the Board within 30 days why reciprocal (*i.e.*, greater, lesser, or identical) discipline should not be imposed and further directed the Board to submit its recommendation to the Court concerning reciprocal discipline "promptly thereafter" (Pet. App. 6a). The Board's report and recommendation to the Court followed within three months (Pet. App. 37a). The Maryland Court's prior adjudication of Petitioner's inactive status provided ample constitutional warrant for the imposition of the interim protection of the public in the District of Columbia without need of an evidentiary pre-suspension hearing. *Cf. Gilbert v. Homar*, ___ U.S. ___ (U.S. June 9, 1997) (No. 96-651).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

*Leonard H. Becker
Bar Counsel

Michael S. Frisch
Senior Assistant Bar Counsel

Office of Bar Counsel
515-5th St., N.W., Room 127
Washington, D.C. 20001
(202) 638-1501

**Counsel of Record for Respondents District of Columbia Court of Appeals and District of Columbia Board on Professional Responsibility*

Dated: August 1997

STATUTES AND RULES

District of Columbia Code, Sec. 11-2502:

> "The District of Columbia Court of Appeals may censure, suspend from practice, or expel a member of its bar for crime, misdemeanor, fraud, deceit, malpractice, professional misconduct, or conduct prejudicial to the administration of justice. A fraudulent act or misrepresentation by an applicant in connection with this application or admission is sufficient cause for the revocation by the court of such person's admission." (July 29, 1970, 84 Stat. 521, Pub. L. 91-358, title I, Sec. 111; 1973 Ed., Sec. 11-2502; June 13, 1994, Pub. L. 103-266, Sec. 1(b)(112), 108 Stat. 713.)

District of Columbia Court of Appeals Rule XI Governing the Bar, Sec. 11:

RECIPROCAL DISCIPLINE

(a) DEFINITION

As used in this section, "disciplining court" shall include any court of the United States as defined in Title 28, Section 451 of the United States Code, the highest court of any state, territory, or possession of the United States, and any other agency or tribunal with authority to disbar or suspend an attorney from the practice of law in any state, territory, or possession of the United States.

(b) NOTIFICATION

It shall be the duty of Bar Counsel to obtain copies of all orders of discipline from other disciplining courts. Upon learning that an attorney subject to the disciplinary jurisdiction of this Court has been disciplined by another disciplining court, Bar Counsel shall obtain a certified copy of the disciplinary order and file it with the Board and with this Court. In addition, any attorney subject to the disciplinary jurisdiction of this Court, upon being subjected to professional disciplinary action by a disciplining court outside the District of Columbia or by anther court in the District of Columbia, shall promptly inform Bar Counsel of such action.

(c) STANDARDS FOR RECIPROCAL DISCIPLINE

Reciprocal discipline shall be imposed unless the attorney demonstrates, by clear and convincing evidence, that:

(1) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistently with its duty, accept as final the conclusion on that subject; or

(3) The imposition of the same discipline by the Court would result in grave injustice; or

(4) The misconduct established warrants substantially different discipline in the District of Columbia; or

(5) The misconduct elsewhere does not constitute misconduct in the District of Columbia.

Unless there is a finding by the Board under (1), (2), or (5) above that is accepted by the Court, a final determination by a disciplining court outside the District of Columbia or by another court in the District of Columbia that an attorney has been guilty of professional misconduct shall conclusively establish the misconduct for the purpose of a reciprocal disciplinary proceeding in this Court.

(d) TEMPORARY SUSPENSION AND SHOW CAUSE ORDER

Upon receipt of a certified copy of an order demonstrating that an attorney subject to the disciplinary jurisdiction of this Court has been suspended or disbarred by a disciplining court outside the District of Columbia or by another court in the District of Columbia, the Court shall forthwith enter an order suspending the attorney from the practice of law in the District of Columbia pending final disposition of any reciprocal disciplinary proceeding, and directing the attorney to show cause within thirty days from the date of the order why the identical discipline should not be imposed. The attorney's response to the order to show cause shall be filed with the Board, which for good cause shown may extend the time for filing a response for a period not to exceed thirty days.

(e) RECOMMENDATION BY THE BOARD

Promptly after the attorney's response to the order to show cause is filed or, if no response is filed, promptly after the time for filing a response has expired, the Board shall recommend to the Court whether reciprocal discipline should be imposed. If no order to show cause has been issued, the Board shall recommend to the Court whether reciprocal discipline should be imposed promptly after receiving a certified copy of an order demonstrating that an attorney subject to the disciplinary jurisdiction of this Court has been subjected to professional disciplinary action, other than suspension or disbarment, by a disciplining court outside the District of Columbia or by another court in the District of Columbia. A copy of the Board's recommendation shall be served on the attorney. If the Board recommends to the Court that reciprocal discipline be imposed, the attorney may file with the Court, within thirty days after service of the Board's recommendation, an opposition to the recommendation stating specific reasons why the imposition of reciprocal discipline would be unwarranted.

(f) ACTION BY THE COURT

(1) When no opposition to the recommendation of the Board has been timely field, and when the Court does not direct that the matter be considered under paragraph (2) of this subsection, the Court will enter an order imposing the discipline recommended by the board upon the expiration of the time permitted for filing a opposition.

(2) In matters not falling under paragraph (1) of this subsection the Court shall impose the identical discipline unless the attor-

ney demonstrates, or the Court finds on the face of the record on which the discipline is predicated, by clear and convincing evidence, that one or more of the grounds set forth in subsection (c) of this section exists. If the Court determines that the identical discipline should not be imposed, it shall enter such order as it deems appropriate, including referral of the matter to the Board for its further consideration and recommendation.

(g) ACTION WHEN RECIPROCAL DISCIPLINE IS NOT RECOMMENDED

If the Board concludes that reciprocal discipline should not be imposed, it shall accept the facts found by the disciplining court unless it has made a finding under (1), (2), or (5) of subsection (c) of this section. In the absence of such a finding, the Board shall either: (Added (9/1/89)

(1) report to the Court its recommendation as to the appropriate discipline, or (Added 9/1/89)

(2) refer the matter to a Hearing Committee for its recommendation as to the appropriate discipline, or (Added 9/1/89)

(3) direct Bar Counsel to institute such proceedings as may be appropriate. (Added 9/1/89)

A copy of the Board's decision shall be served on the attorney. If the Board makes a recommendation to the Court under (1) above, the attorney may, within thirty days after service, file with the Court an opposition to the recommendation stating specific reasons why the imposition of reciprocal discipline would be unwarranted. If the Board makes a rec-

ommendation to the Court under (1) or directs Bar Counsel to institute proceedings under (3) above, Bar Counsel may, within thirty days after service, file with the Court exceptions to the decision of the Board. (Added 9/1/89)

(h) EFFECT OF STAY OF DISCIPLINE BY DISCIPLINING COURT

If at any time the discipline imposed outside the District of Columbia or by another court in the District of Columbia is stayed, any reciprocal discipline imposed by this Court or by the Board shall be deferred until the stay expires. (Added 9/1/89)